

TITLE 13
PLANNING AND DEVELOPMENT

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CHAPTER 1

SPLITTING LOTS, PARCELS OR TRACTS OF LAND

SECTION:

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13-1-1: **DEFINITION:** A "lot split" is any division of a lot, parcel, or tract of land into not more than two (2) parcels when both divided parcels meet or exceed the minimum requirements for platted lots in the applicable zoning district. (Amended Ord. 40, 8-16-1977)

13-1-2: **MINIMUM LOT REQUIREMENTS:** No lot, parcel or tract of land shall be divided unless the resultant lots have at least the minimum width, depth and square footage as required for any parcel of land in the zoning district wherein the lot is located. (Amended Ord. 40, 8-16-1977)

13-1-3: **FREQUENCY OF SPLITTING LOTS:** No owner may utilize this method of land division on any parcel more than one time in any three (3) year period. A three (3) year waiting period for a lot split is required on all lots, parcels or tracts from the date they were created by previous lot splits under this chapter. (Amended Ord. 40, 8-16-1977)

A. Exceptions. A lot split may be applied for within the three (3) year waiting period provided the following conditions are met:

1. The property owner has owned the property for more than five years.
2. A one year waiting period shall be required between splits.
3. A maximum of three lots shall be created including the original lot.
4. City infrastructure and utilities such as sanitary sewer, storm sewer, water main and streets are in place.
5. Grading, drainage and erosion control plans shall be prepared that properly address how drainage will be handled on the site as well as

the affect on adjacent properties to the satisfaction of the City.
(Amended 431, 10-15-13)

13-1-4: **APPLICATION FOR LOT SPLIT:** The applicant shall provide the following information:

- A. The scale and north direction.
- B. Dimensions of the property.
- C. Names and locations of adjacent streets.
- D. Location of existing buildings on and within one hundred feet (100') of subject property.
- E. Current zoning and legal description.
- F. Sufficient proof that the lot has not been split within the last three (3) years.
- G. A list of the property owners within three hundred fifty feet (350') of the lot split.
- H. Such other information as may be required to fully represent the intent of the lot split. (Amended Ord. 40, 8-16-1977)

13-1-5: **FEES:**

- A. There shall be a single charge as set forth by ordinance plus consultant's fees, if any, for a lot split application¹.
- B. Where parkland was dedicated or a park fee paid at the time the original parcel was created, there shall be no park fee assessed or land dedicated at the time of the lot split application. If no park fees have been assessed nor land dedicated as above, the fee, as set forth by ordinance for each lot created under this chapter, may be assessed for park fees². (Amended Ord. 40, 8-16-1977; amd. 2003 Code)

13-1-6: **REVIEW AND RECOMMENDATIONS:**

- A. Planning And Zoning Commission Review: The proposed lot split shall first be presented to the Planning and Zoning Commission for its review and recommendation. Such recommendations shall consider land uses, traffic control, zoning regulation, future developments, and conformance with the

¹ See subsection 1-7-3H of this code.

² See subsection 1-7-3G of this code.

comprehensive development plan, and any other criteria deemed pertinent by the Planning and Zoning Commission. (Amended Ord. 40, 8-16-1977)

- B. Notice To Adjacent Property Owners: Upon receipt of an application for a lot split, the Community Development Director shall notify by mail all property owners within three hundred fifty feet (350') of the property of the date of the review of such lot split. (Amended Ord. 40, 8-16-1977; amd. 2003 Code)
- C. Planning And Zoning Commission Recommendation To City Council: The division of a lot may be recommended for approval; provided that such split is in conformance with the City Comprehensive Plan, does not interfere with orderly planning, is not contrary to the public interest and does not nullify the intent of this chapter.
- D. City Council Action:
 - 1. Following review and recommendation by the Planning and Zoning Commission, the request for a lot split shall be placed on the agenda of the City Council in the following manner:
 - a. Recommendations from the Planning and Zoning Commission meeting held on the second Tuesday shall be placed on the agenda of the City Council at the first Tuesday meeting of the following month.
 - b. Recommendations from the Planning and Zoning Commission meeting held on the fourth Tuesday shall be placed on the agenda of the City Council at the third Tuesday meeting of the following month, unless there are five (5) Tuesdays in the given month from which the recommendation of the Planning and Zoning Commission is made, in which case, the recommendation shall be placed on the agenda of the City Council at the first Tuesday meeting of the following month.
 - 2. Within sixty (60) days following receipt of the proposed lot split from the Planning and Zoning Commission, the Council shall approve or disapprove by resolution. If approved, a certified copy of the resolution approving the lot split shall be forwarded to the petitioner.
- E. Record Of Lot Split: The lot split, together with a certified copy of the resolution, shall thereafter be filed with the County Recorder's office.

- F. Time Limit On Implementing Lot Split: If the City Council determines that the conditions of approval are not met within twelve (12) months, the lot split will be null and void. (Amended Ord. 40, 8-16-1977)

13-1-7: **VARIANCES:** Variances from the requirements of this title, Title 11: Subdivision Regulations, and Title 12: Zoning Regulations, may be granted by the City Council as provided in City Code 12-14-7, except that any variance request shall be made as a part of the lot split approval process. (Amended Ord. 407, 6-21-11)

13-1-8: **COMPLIANCE WITH PROVISIONS:**

- A. The effect of this chapter shall not work to preclude compliance with utilities hookup, payment of levied and pending assessments, and performance of any other requirements of the ordinances of the city.
- B. The owner, or agent of owner, of any parcel shall not divide any lot or parcel for the purpose of sale, transfer, or lease with the intent of evading the provisions of this chapter.
- C. The owner, or agent of owner, of any parcel shall not sell or otherwise convey said parcel with the intent of evading the provisions of this chapter or circumventing attempts to plat acreage or otherwise subdivide tracts of land within the city. (Amended Ord. 40, 8-16-1977)
- D. No subdivision of land is allowed in the area designated on the Comprehensive Plan as "rural reserve" unless storm sewer, sanitary sewer and a municipal water supply are constructed to serve the area being divided. The following exception is allowed: excluding minor parcels that will not allow for additional building units that will not impede future development of the rural reserve upon approval of the City Council. (Ord. 274, 9-2-2003)

13-1-9: **APPLICATION AND TERM OF PROVISIONS; CONFLICTS:**

- A. This chapter shall apply to and govern the entire city during the period for which it is in effect. This chapter, during its effective period, shall replace and supersede provisions in all other ordinances and regulations applicable to the city which are in conflict or inconsistent with the provisions herein. All ordinances and provisions therein which are not in conflict with the terms and conditions of this chapter shall continue in full force and effect.

13-1-10: **ENFORCEMENT AND PENALTY:** Any person, firm or corporation violating any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as defined by state law. The lot

splitting not in accordance with the requirements of this chapter may be enforced by mandamus, injunction, or any other appropriate remedy in any court of competent jurisdiction. (Amended Ord. 40, 8-16-1977)

CHAPTER 2

AGRICULTURAL PRESERVATION

SECTION:

- 13-2-1: Findings Of Fact
- 13-2-2: Purpose
- 13-2-3: Definitions
- 13-2-4: Agricultural Preservation District
- 13-2-5: Variances
- 13-2-6: Violation; Penalty

13-2-1: **FINDINGS OF FACT:** The governing body does hereby find that the land in the city for which the logical and proper use is agriculture is threatened by rapid expanding growth and urban development. The governing body further finds that urban development must be accommodated in a logical and orderly fashion in order to minimize the conflicts between urban and agricultural uses. The governing body further finds that the development and urbanization of high quality agricultural land is detrimental to the Comprehensive Plan of the City. (Amended Ord. 57, 2-2-1982; amd. 2003 Code)

13-2-2: **PURPOSE:** It is the purpose of this chapter to identify and classify such lands in the city for which the logical and proper long term use is agriculture and to preserve and protect said agricultural uses pursuant to Minnesota Statutes Chapter 473H. (Amended Ord. 57, 2-2-1982)

13-2-3: **DEFINITIONS:** In addition to the following, all other definitions contained in Title 12 of this code shall also be applicable to this chapter¹:

ACCESSORY STRUCTURE:	A structure or portion of a structure subordinate to and serving the principal use or structure on the same lot and customarily incidental thereto.
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CAPITAL IMPROVEMENT PROGRAM:	An itemized program for a five (5) year prospective period, subject to at least biennial review, setting forth the schedule, timing and details of specific contemplated public improvements by year, together with their estimated cost, the need for each improvement, financial sources, and the financial impact that the improvements will have on the local governmental unit.
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¹ See title 12, chapter 2 of this code.

**COMMERCIAL
AGRICULTURE:**

The use of land for the growing and/or production of field crops, livestock, and livestock products for the production of income including, but not limited to, the following:

A. Field crops, including: barley, soy beans, corn, hay, oats, potatoes, sorghum, sunflowers and vegetables.

B. Livestock, including: dairy and beef cattle, goats, horses, sheep, hogs, poultry, game birds and other animals including ponies, deer, rabbits, and mink.

C. Livestock products, including: milk, butter, cheese, eggs, meat, fur and honey.

**COMPREHENSIVE
SEWER POLICY PLAN:**

A plan adopted by the city describing, designating and scheduling the areas to be sewered by the public system, the existing and planned capacities of the public system, the standards and conditions under which the installation of private sewer systems will be permitted and, to the extent practicable, the areas not suitable for public or private systems because of public health, safety and welfare considerations.

DRAINAGE SYSTEM:

Any natural or artificial feature or structure used for the conveyance, drainage, or storage of surface and/or underground water, including, but not limited to, streams, rivers, creeks, ditches, channels, conduits, gullies, ravines, washes, lakes or ponds and structures such as culverts, drainage tile, dams, bridges and water storage basins.

DRIVEWAYS:

A private road or path for vehicle access to a public road, which is wholly located on the parcel that is afforded access.

DWELLING UNIT:

A residential building or portion thereof intended for occupancy by a family but not including hotels, motels, boarding or rooming houses, tourist homes or trailers. It shall include manufactured homes.

FARM:	Real property used for commercial agriculture or horticulture comprising at least forty (40) acres of either contiguous or noncontiguous acreage, all of which is owned and operated by a single family, family corporation, individual or corporation. Separate parcels must meet the minimum size requirements set out in Minnesota Statutes Section 473H.03, Subdivision 2, i.e., ten (10) acres.
FARM ANIMALS:	Animals and poultry commonly kept for productive purposes on a farm, such as cattle, hogs, sheep, goats, chickens, and other similar animals.
FARM BUILDING:	Any building or accessory structure other than a farm or non-farm dwelling which is used in a farming operation, including, but not limited to, a barn, granary, silo, farm implement storage building or milk house.
FEEDLOT:	An area where fifteen (15) or more farm animals are confined.
HISTORIC SITE:	Structure or area of land or water of historic, archeological, paleontological or architectural value which has been designated as an historic site in the Federal Register of Historical Landmarks, the Minnesota Historical Society, or by the City.
HOME OCCUPATION:	Any gainful occupation or profession engaged in by the occupant of a dwelling at or from the dwelling when carried on within a dwelling unit and not in an accessory building; provided that no signs other than those normally utilized in residential districts are present, no stock in trade is stored on the premises, over the counter retail sales are not involved, and entrance to the home occupation is gained from within the structure ¹ .
HORTICULTURE:	The use of land for the growing or production for income of fruits, vegetables, flowers, nursery stock, including ornamental plants and trees, and cultured sod.
IRRIGATION SYSTEM:	Any structure or equipment, mechanized or other, used to supply water for commercial agriculture or

¹ See title 12, chapter 10 of this code for home occupation regulations.

horticulture, including, but not limited to, wells, pumps, motors, pipes, culverts, gates, dams, ditches, tanks, ponds, and reservoirs.

PARCEL: A separate area of land, including a lot, having specific boundaries and capable of being conveyed and recorded.

QUARTER-QUARTER SECTION: The northeast, northwest, southwest or southeast quarter of a quarter section delineated by the United States government system of land survey and which is exactly or nearly forty (40) acres in size.

RELATIVES: Father, mother, spouse, brother, sister, son, daughter, son-in-law, daughter-in-law.

ROAD: A public thoroughfare, including, without limitation, streets, highways, freeways, parkways, thoroughfares, roads, avenues, boulevards, lanes, or places, however described, but not including private driveways or routes.

STRUCTURE: Anything erected, the use of which requires more or less permanent location on the ground, or attached to something having a permanent location on the ground. This shall include signs. (Amended Ord. 57, 2-2-1982; amd. 2003 Code)

13-2-4: AGRICULTURAL PRESERVATION DISTRICT:

A. District Designated And Established:

1. The AgP Agricultural Preservation zoning district, together with the applicable requirements contained herein, is hereby established as a part of the Zoning Ordinance of the City¹.

2. The locations and boundaries of the district established by this chapter shall be set forth on the zoning map of the City and said map is hereby made a part of this chapter². Said map, consisting of sheets, and all notations, references and data shown thereon, is hereby incorporated by reference into this chapter and shall be made as much a part of it as if all were fully described herein. The zoning map shall be kept on file in the Zoning Administrator's office.

¹ See also section 12-3-2 of this code.

² See also section 12-3-5 of this code.

B. Intent: This district is intended to contain those areas of Andover where it is necessary and desirable, because of the high quality of the soils, availability of water, and/or highly productive agricultural capability, to preserve, promote, maintain, and enhance the use of the land for agricultural purposes and to protect such land from encroachment by nonagricultural uses, structures, or activities. It is also intended that those areas within the Metropolitan Urban Service Area boundary that are determined by the City Council to be unfeasible because of soils and other geological factors for residential, commercial or industrial purposes be allowed the same protection.

C. Permitted Uses And Structures: The following uses shall be permitted by right:

Commercial agriculture and horticulture.

Farm buildings.

Farm drainage and irrigation systems.

Forestry.

Historic sites.

Permanent single-family dwelling units that do not exceed a density of one per quarter-quarter section.

1. The single-family dwelling unit shall be located on a separate parcel that is at least two and one-half (2 1/2) acres in size.

2. The parcel on which the single-family dwelling unit is located must have at least three hundred feet (300') of frontage along a road that has been accepted and is maintained by the city.

3. The driveway serving the parcel shall be separated from adjacent driveways on the same side of the road by the following distances depending upon road types:

Local road.....	100 feet
Collector road	300 feet
Minor arterial	500 feet
Minimum distance from intersection of 2 or more of the above	100 feet

4. The single-family dwelling unit shall be set back at least seventy-

five feet (75') from the road right-of-way.

- D. Permitted Accessory Uses And Structures: The following accessory uses and structures shall be permitted:

Uses and structures that are customarily accessory and clearly incidental and subordinate to permitted uses and structures, including:

Dwelling units that are temporarily occupied by seasonal workers who are employed on the agricultural property where they are located. Such dwelling units shall not be occupied during the time that the agricultural property is not being actively farmed.

Landscaping items.

Playhouses, swimming pools, and storage buildings appurtenant to single-family dwellings.

Private garages. (Amended Ord. 57, 2-2-1982)

- E. Conditional Uses: The following Conditional Uses may be approved by the City in the AgP Agricultural Preservation district; provided that the provisions and requirements of Subsection F of this section are fulfilled:

Agricultural service establishments primarily engaged in performing agricultural animal husbandry or horticultural services on a fee or contract basis including, but not limited to, corn shelling, hay baling and threshing; sorting, grading and packing fruits and vegetables for the grower; agricultural produce milling and processing; horticultural services; crop dusting; fruit picking; grain cleaning; land grading; harvesting and plowing; farm equipment service and repair; veterinary services and supplies and structures for the sale of agricultural produce grown on the site.

Feedlot and poultry facilities.

Home occupations.

Public utility and public service structures including electric transmission and distribution lines, substations, gas regulator stations, communications equipment buildings, pumping stations and reservoirs. (Amended Ord. 57, 2-2-1982; amd. 2003 Code)

- F. Standards For Granting Conditional Use Permits: No Conditional Use Permit shall be issued by the City unless, following review and written findings, it is determined that the proposed use satisfies the following conditions:

1. The use shall not be one to which the noise, odor, dust, or chemical residues of commercial agriculture or horticulture might result in creation or establishment of a nuisance or trespass.
 2. All agricultural service establishments shall be located at least three hundred feet (300') from any driveway affording access to a farm dwelling and at least five hundred feet (500') from any single-family dwelling.
 3. All agricultural service establishments may require screening from the public view on the perimeter of the establishment by a solid fence, wall, or natural vegetation of not less than eight feet (8') in height.
 4. An agricultural service establishment shall be incidental and necessary to the conduct of agriculture within the district.
 5. Public utility and service structures shall be located and constructed at such places and in such manner that they will minimize segmenting land of any one farm and will not interfere with the conduct of agriculture by limiting or interfering with the access to fields or the effectiveness and efficiency of the farmer and farm equipment including crop spraying aircraft.
- G. Prohibited Uses And Structures: All other uses and structures that are not specifically permitted by right or by Conditional Use Permit shall be prohibited in the AgP Agricultural Preservation district. (Amended Ord. 57, 2-2-1982)
- H. Minimum Lot Sizes, Yard Requirements And Structure Spacings: Minimum lot sizes, yard requirements and structure spacings shall be as set forth in Subsection C of this section, entry reading "Permanent single-family dwelling units..."
- I. Application In Scenic River District: Whenever property is zoned for AgP within the Scenic River District, the most restrictive provisions of this Chapter and Chapter 5 of this title shall apply. (Amended Ord. 57, 2-2-1982; amd. 2003 Code)

13-2-5: **VARIANCES:**

- A. Variances Authorized: Variances to the strict provisions of this chapter may be granted as provided in City Code 12-14-7. (Amended Ord. 407, 6-21-11)
- B. Appeals Authorized: The petitioner, may appeal an interpretation of this chapter by an employee of the city as provided in City Code 12-14-9. If

the appeal is upheld, the petitioner shall not be subject to the required fee.
(Amended Ord. 57, 2-2-1982; Amended Ord. 407, 6-21-11)

13-2-6: **VIOLATION; PENALTY:** Any person, firm, corporation or voluntary association which violates or refuses to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as defined by state law. (Amended Ord. 57, 2-2-1982)

CHAPTER 3

PLANNED UNIT DEVELOPMENT (PUD)

SECTION:

- 13-3-1: Purpose
- 13-3-2: Utilization of PUD
- 13-3-3: PUD Concept Review
- 13-3-4: Uses
- 13-3-5: Density
- 13-3-6: Zoning And Subdivision Standards And Requirements
- 13-3-7: Approval Process
- 13-3-8: Fees And Costs
- 13-3-9: Findings Required
- 13-3-10: Revisions And Amendments
- 13-3-11: Desirable PUD Design Qualities
- 13-3-12: Approval Of Planned Unit Development

13-3-1: **PURPOSE:** The purpose of a PUD is to encourage more efficient allocation of density and intensity of land use where such arrangement is desirable and feasible by providing the means for greater creativity and flexibility in environmental design than provided under the strict application of this code. It must be demonstrated to the satisfaction of the City Council that a higher quality development will result than could be otherwise achieved through strict application of this code. (Ord. 298, 8-4-2004)

13-3-2: **UTILIZATION OF PUD:** Planned Unit Development (PUD) regulations may be allowed by the City Council to be applied and/or utilized for all developments including the following: townhomes, single- and two-family homes (both urban and rural), apartment projects, multiuse structures, commercial developments, industrial developments, mixed residential and commercial developments and similar projects. (Ord. 298, 8-4-2004)

13-3-3: **PUD CONCEPT REVIEW:** Any person or persons who may apply for a PUD may request a concept review with respect to land which may be subject to a PUD. The purpose of a PUD concept review is to afford such persons an opportunity, without incurring substantial expense, to have the general feasibility of a PUD proposal considered. PUD concept reviews shall follow the sketch plan procedures provided in Section 11-2-1 of this code. (Ord. 298, 8-4-2004)

13-3-4: **USES:** Planned Unit Developments shall be required to conform to the permitted and conditional uses set forth in Title 12 of this code pertaining to the applicable zoning district. (Ord. 298, 8-4-2004)

13-3-5: **DENSITY:** The density of residential developments shall be required to conform to the applicable land use district. (Ord. 298, 8-4-2004)

13-3-6: **ZONING AND SUBDIVISION STANDARDS AND REQUIREMENTS:** All standards and provisions relating to an original zoning district shall apply, unless otherwise approved as a part of the PUD. All standards may be modified or waived provided the applicant demonstrates harmony with the purpose of the PUD and the findings described in Section 13-3-9 of this chapter. (Ord. 298, 8-4-2004)

13-3-7: **APPROVAL PROCESS:** An applicant for a PUD shall submit in the application all of the material required by this chapter. Each PUD requested must adhere to the following process:

- A. Permitted and conditional uses shall follow the Conditional Use Permit procedures provided in Section 12-14-6 of this code to establish the development standards for the PUD. These uses shall also complete the commercial site plan process once the Planned Unit Development has been approved. (Amd. 2/20/07, Ord. 341)
- B. Applications involving the subdivision of land shall complete a preliminary and final plat under the procedures provided in Title 11, "Subdivision Regulations", of this code. (Ord. 298, 8-4-2004)

13-3-8: **FEES AND COSTS:** Applications for a PUD shall be filed at the office of the City Planner along with a nonrefundable application fee for the approval process specified in Sections 13-3-3 and 13-3-7 of this chapter in the amount established by the City Council to defray administrative costs. (Ord. 298, 8-4-2004)

13-3-9: **FINDINGS REQUIRED:** In order for a PUD to be approved, the City shall find that the following are present:

- A. The proposed development is not in conflict with the goals of the Comprehensive Plan of the city.
- B. The proposed development is designed in such a manner as to form a desirable and unified environment within its own boundaries.
- C. The proposed development demonstrates how each modified or waived requirement contributes to achieving the purpose of a PUD.
- D. The PUD is of composition, and arrangement that its construction, marketing, and operation are feasible as a complete unit without dependence upon any subsequent unit. (Ord. 298, 8-4-2004)

13-3-10: **REVISIONS AND AMENDMENTS:** Administrative approval of incidental changes in the PUD may be authorized by the City Planner upon review and approval by ARC. Such administrative approvals shall not substantially alter the character of the approved PUD and shall be limited to landscaping (not including quantity reduction), color schemes (not including materials), association documents, fencing, entrance monuments and decks. Changes in uses or development/design standards must be submitted for a full public hearing review process. (Amended Ord. 314, 10-4-2005)

13-3-11: **DESIRABLE PUD DESIGN QUALITIES:** The following design qualities will be sought in any PUD:

- A. Achieves efficiency in the provision of streets and utilities and preserves area to achieve the elements of design qualities described in this chapter.
- B. Provides convenient and safe access for vehicles and pedestrians and all types of activity that are anticipated to be a part of the proposed development.
- C. Provides a buffer between different uses, adjacent properties, roadways, between backyards of back-to-back lots.
- D. Preserves existing stands of trees and/or significant trees.
- E. Provides considerable landscaping treatments that complement the overall design and contribute toward an overall landscaping theme.
- F. Preserves significant usable space on individual lots or through the provision of open space within the development.
- G. Provides an attractive streetscape through the use of undulating topography, landscaping, decorative street lighting, decorative mailbox groupings, retaining walls, boulders, fencing, area identification signs, etc.
- H. The proposed structures within the development demonstrate quality architectural design and the use of high quality building materials for unique design and detailing.
- I. The lasting quality of the development will be ensured by design, maintenance and use guidelines established through an owners' association. (Ord. 298, 8-4-2004)

13-3-12: **APPROVAL OF PLANNED UNIT DEVELOPMENT:** The developer must demonstrate that the amenities and qualities of the Planned Unit

Development are beneficial and in the public interest to allow the development to be approved. A substantial amount of the design qualities identified in Section 13-3-11 of this chapter shall be found to be present in order to approve a PUD. The amount of amenities and type of qualities that constitute an acceptable PUD are at the sole discretion of the City Council to determine. (Ord. 298, 8-4-2004)

13:3-13: **REDEVELOPMENT PUDs:** A property owner may apply for a redevelopment PUD for their property, if the property meets the criteria outlined in this section. Such redevelopment PUDs shall only be used for lot splits. PUDs on all other subdivisions shall follow the normal PUD requirements laid out in this chapter. All provisions of City Code chapter 13-3 shall apply to redevelopment PUDs except for section 13-3-11. A redevelopment PUD may be permitted if the subject property meets the following standards:

- A. The existing principal structure on the property is at least 30 years old, or does not meet current building codes, or has a blighting effect on the surrounding neighborhood, and will be removed as part of the redevelopment of the property.
- B. The houses built on the new lots would be similar in size and architectural design to those in the surrounding neighborhood. Architectural plans must be included in the application for a redevelopment PUD and approved by the Council. (Amd. 2/20/07, Ord. 341)

CHAPTER 4

SHORELAND MANAGEMENT ¹

SECTION:

- 13-4-1: Statutory Authorization And Policy
- 13-4-2: General Provisions
- 13-4-3: Definitions
- 13-4-4: Administration And Enforcement
- 13-4-5: Shoreland Classification System and Land Use Districts
- 13-4-6: Zoning And Water Supply/Sanitary Provisions
- 13-4-7: Nonconformities
- 13-4-8: Subdivision And Platting Provisions
- 13-4-9: Planned Unit Developments (PUDs)

13-4-1: **STATUTORY AUTHORIZATION AND POLICY:**

- A. Statutory Authorization: This chapter is adopted pursuant to the authorization and policies contained in Minnesota Statutes Chapter 103F, Minnesota Regulations Parts 6120.2500 to 6120.3900, and the planning and zoning enabling legislation in Minnesota Statutes Chapter 462. (Ord. 108, 9-20-1994; amd. 2003 Code)
- B. Policy: The uncontrolled use of shorelands of the city affects the public health, safety, and general welfare, not only by contributing to pollution of public waters, but also by impairing the local tax base. Therefore, it is in the best interests of the public health, safety, and welfare to provide for the wise subdivision, use, and development of shorelands of public waters. The State Legislature has delegated responsibility to local governments of the state to regulate the subdivision, use, and development of the shorelands of public waters and thus preserve and enhance the quality of surface waters, conserve the economic and natural environmental values of shorelands, and provide for the wise use of waters and related land resources. This responsibility is hereby recognized by the City. (Ord. 108, 9-20-1994)

13-4-2: **GENERAL PROVISIONS:**

- A. Jurisdiction: The provisions of this chapter shall apply to the shorelands of the public water bodies as classified in Section 13-4-5 of this chapter. Pursuant to Minnesota Regulations Parts 6120.2500 to 6120.3900, no lake, pond, or flowage less than ten (10) acres in size in municipalities, or

¹ See also title 12, chapter 12 of this code.

twenty five (25) acres in size in unincorporated areas need be regulated in a local government's shoreland regulation. A body of water created by a private user where there was no previous shoreland may, at the discretion of the governing body, be exempt from this chapter.

- B. Compliance: The use of any shoreland or public waters; the size and shape of lots; the use, size, type, and location of structures on lots; the installation and maintenance of water supply and waste treatment systems; the grading and filling of any shoreland area; the cutting of shoreland vegetation; and the subdivision of land shall be in full compliance with the terms of this chapter and other applicable regulations.
- C. Interpretation And Application: In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, and shall be liberally construed in favor of the governing body, and shall not be deemed a limitation or repeal of any other powers granted by State Statutes.
- D. Severability: If any section, clause, provision, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.
- E. Abrogation And Greater Restrictions: It is not intended by this chapter to repeal, abrogate, or impair any existing easement, covenants, or deed restrictions. However, where this chapter imposes greater restriction, the provisions of this chapter shall prevail. All other ordinances inconsistent with this chapter are hereby repealed to the extent of the inconsistency only. (Ord. 108, 9-20-1994)

13-4-3: **DEFINITIONS:** Unless specifically defined in this section, words or phrases used in this chapter shall be interpreted so as to give them the same meanings as they have in common usage and so as to give this chapter its most reasonable application. For the purpose of this chapter, the words "must" and "shall" are mandatory and not permissive. All distances, unless otherwise specified, shall be measured horizontally.

ACCESSORY
STRUCTURE OR
FACILITY:

Any building or improvement subordinate to a principal use which, because of the nature of its use, can reasonably be located at or greater than normal structure setbacks.

BLUFF:

A topographic feature, such as a hill, cliff, or embankment, having the following characteristics (an area with an average slope of less than 18 percent over a distance of 50 feet or more shall

not be considered part of the bluff):

- A. Part or all of the feature is located in a shoreland area;
- B. The slope rises at least twenty-five feet (25') above the ordinary high water level of the water body;
- C. The grade of the slope from the toe of the bluff to a point twenty-five feet (25') or more above the ordinary high water level averages thirty percent (30%) or greater; and
- D. The slope must drain toward the water body.

BLUFF IMPACT ZONE: A bluff and land located within twenty feet (20') from the top of a bluff.

BOATHOUSE: A structure designed and used solely for the storage of boats or boating equipment.

BUILDING LINE: A line parallel to a lot line or the ordinary high water level at the required setback, beyond which a structure may not extend.

COMMERCIAL PLANNED UNIT DEVELOPMENTS: Are typically uses that provide transient, short term lodging spaces, rooms, or parcels, and their operations are essentially service oriented. For example: hotel/motel accommodations, resorts, recreational vehicle and camping parks, and other primarily service oriented activities are "Commercial Planned Unit Developments".

COMMERCIAL USE: The principal use of land or buildings for the sale, lease, rental, or trade of products, goods, and services.

COMMISSIONER: The Commissioner of the Department of Natural Resources of the state.

CONDITIONAL USE: A land use or development as defined by ordinance that would not be appropriate generally, but may be allowed with appropriate restrictions as provided by official controls upon a finding that certain conditions as detailed in the zoning ordinance exist, the use or development conforms to the Comprehensive Land Use Plan of the community, and the use is compatible with the existing neighborhood.

DECK:	A horizontal, unenclosed platform with or without attached railing, seats, trellises, or other features, attached or functionally related to a principal use or site, and at any point extending more than three feet (3') above ground.
DUPLEX, TRIPLEX, AND QUAD:	A dwelling structure on a single lot, having two (2), three (3), and four (4) units respectively, being attached by common walls, and each unit equipped with separate sleeping, cooking, eating, living, and sanitation facilities.
DWELLING SITE:	A designated location for residential use by one or more persons using temporary or moveable shelter, including camping and recreational vehicle sites.
DWELLING UNIT:	Any structure or portion of a structure or other shelter designed as short term or long term living quarters for one or more persons, including rental or timeshare accommodations such as motel, hotel, resort rooms, and cabins.
EXTRACTIVE USE:	The use of land for surface or subsurface removal of sand, gravel, rock, industrial minerals, other nonmetallic minerals, and peat, not regulated under Minnesota Statutes Section 93.44 to 93.51.
FOREST LAND CONVERSION:	The clear cutting of forested lands to prepare for a new land use other than reestablishment of a subsequent forest stand.
GUEST COTTAGE:	A structure used as a dwelling unit that may contain sleeping spaces and kitchen and bathroom facilities in addition to those provided in the primary dwelling unit on a lot.
HEIGHT OF BUILDING:	The vertical distance between the highest adjoining ground level at the building, or ten feet (10') above the lowest ground level, whichever is lower, and the highest point of a flat roof, or average height of the highest gable of a pitched or hipped roof.
INDUSTRIAL USE:	The use of land or buildings for the production, manufacture, warehousing, storage, or transfer of goods, products, commodities, or other wholesale items.

INTENSIVE VEGETATION CLEARING:	The complete removal of trees or shrubs in a contiguous patch, strip, row, or block.
LOT:	A parcel of land designated by plat, metes and bounds, registered land survey, auditor's plot, or other accepted means, and separated from other parcels or portions by said description for the purpose of sale, lease, or separation.
LOT WIDTH:	The shortest distance between lot lines measured at the midpoint of the building line.
NONCONFORMITY:	Any legal use, structure, or parcel of land already in existence, recorded, or authorized, before the adoption of official controls or amendments thereto, that would not have been permitted to become established under the terms of the official controls as now written, if the official controls had been in effect prior to the date it was established, recorded, or authorized.
ORDINARY HIGH WATER LEVEL:	The boundary of public waters and wetlands, and shall be an elevation delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape, commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. For watercourses, the ordinary high water level is the elevation of the top of the bank of the channel. For reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.
PLANNED UNIT DEVELOPMENT (PUD):	A development with alternative development standards approved by the City Council to create a higher quality development than might otherwise be achieved through the strict application of this code. The PUD is an overlay to the original zoning district; and the use of a PUD allows the development to waive or modify the standards of the original zoning district.
PRACTICAL DIFFICULTIES:	As used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permit by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by

the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended Ord. 407, 6-21-11)

PUBLIC WATERS:	Any waters as defined in Minnesota Statutes, Section 103G.005, Subdivision 15.
SEMIPUBLIC USE:	The use of land by a private, nonprofit organization to provide a public service that is ordinarily open to some persons outside the regular constituency of the organization.
SENSITIVE RESOURCE MANAGEMENT:	The preservation and management of areas unsuitable for development in their natural state due to constraints such as shallow soils over groundwater or bedrock, highly erosive or expansive soils, steep slopes, susceptibility to flooding, or occurrence of flora or fauna in need of special protection.
SETBACK:	The minimum horizontal distance between a structure, sewage treatment system, or other facility and an ordinary high water level, sewage treatment system, top of a bluff, road, highway, property line, or other facility.
SEWAGE TREATMENT SYSTEM:	A septic tank and soil absorption system or other individual or cluster type sewage treatment system as described and regulated in Subsection 13-4-6H of this chapter.
SEWER SYSTEM:	Pipelines or conduits, pumping stations, and force main, and all other construction, devices, appliances, or appurtenances used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal.
SHORE IMPACT ZONE:	Land located between the ordinary high water level of a public water, and a line parallel to it at a setback of fifty percent (50%) of the structure setback.
SHORELAND:	Land located within the following distances from public waters: one thousand feet (1,000') from the ordinary high water level of a lake, pond, or flowage; and three hundred feet (300') from a river or stream,

or the landward extent of a floodplain designated by ordinance on a river or stream, whichever is greater. The limits of shorelands may be reduced whenever the waters involved are bounded by topographic divides that extend landward from the waters for lesser distances and when approved by the Commissioner.

SIGNIFICANT HISTORIC SITE: Any archaeological site, standing structure, or other property that meets the criteria for eligibility to the National Register of Historic Places, or is listed in the State Register of Historic Sites, or is determined to be an unplatted cemetery that falls under the provisions of Minnesota Statutes Section 307.08. A historic site meets these criteria if it is presently listed on either register or if it is determined to meet the qualifications for listing after review by the Minnesota State Archaeologist or the Director of the Minnesota Historical Society. All unplatted cemeteries are automatically considered to be significant historic sites.

STEEP SLOPE: Land where agricultural activity or development is either not recommended or described as poorly suited due to slope steepness and the site's soil characteristics, as mapped and described in available county soil surveys or other technical reports, unless appropriate design and construction techniques and farming practices are used in accordance with the provisions of this chapter. Where specific information is not available, "steep slopes" are lands having average slopes over twelve percent (12%), as measured over horizontal distances of fifty feet (50') or more, that are not bluffs.

STRUCTURE: Any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities.

SUBDIVISION: Land that is divided for the purpose of sale, rent, or lease, including Planned Unit Developments.

SURFACE WATER ORIENTED COMMERCIAL USE: The use of land for commercial purposes, where access to and use of a surface water feature is an integral part of the normal conduct of business. Marinas, resorts, and restaurants with transient docking facilities are examples of such use.

TOE OF THE BLUFF:	The lower point of a fifty foot (50') segment with an average slope exceeding eighteen percent (18%).
TOP OF THE BLUFF:	The higher point of a fifty foot (50') segment with an average slope exceeding eighteen percent (18%).
VARIANCE:	The same as that term is defined or described in Minnesota Statutes Chapter 462.
WATER ORIENTED ACCESSORY STRUCTURE OR FACILITY:	A small, aboveground building or other improvement, except stairways, fences, docks, and retaining walls, which, because of the relationship of its use to a surface water feature, reasonably needs to be located closer to public waters than the normal structure setback. Examples of such structures and facilities include boathouses, gazebos, screen houses, fish houses, pump houses, and detached decks.
WETLAND:	A surface water feature classified as a wetland in the United States Fish and Wildlife Service Circular No. 39 (1971 edition). (Ord. 108, 9-20-1994; amd. 2003 Code; amd. 298, 8-4-2004)

13-4-4: ADMINISTRATION AND ENFORCEMENT¹:

A. Permit Requirements:

1. Permit Required: A permit is required for the construction of buildings or building additions (and including such related activities as construction of decks and signs), the installation and/or alteration of sewage treatment systems, and those grading and filling activities not exempted by Subsection 13-4-6C of this chapter. (Ord. 108, 9-20-1994)
2. Application For Permit: Application for a permit shall be made to the Building Official on the forms provided. The application shall include the necessary information so that the Zoning Administrator can determine the site's suitability for the intended use and that a compliant sewage treatment system will be provided. (Ord. 108, 9-20-1994; amd. 2003 Code)
3. Nonconforming Sewage Treatment System: Permits shall stipulate that any identified nonconforming sewage treatment system, as defined by Subsection 13-4-6H of this chapter, shall be reconstructed or replaced in accordance with the provisions of this chapter.

¹ See also section 14-1-14 of this code.

- B. Certificate Of Zoning Compliance: The Zoning Administrator shall issue a certificate of zoning compliance for each activity requiring a permit as specified in Subsection A of this section. This certificate will specify that the use of land conforms to the requirements of this chapter. Any use, arrangement, or construction at variance with that authorized by permit shall be deemed a violation of this chapter and shall be punishable as provided in Subsection E of this section.
- C. Notifications To Department Of Natural Resources:
1. Copies of all notices of any public hearings to consider variances, amendments, or conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked at least ten (10) days before the hearings. Notices of hearings to consider proposed subdivisions/plats must include copies of the subdivision/plat.
 2. A copy of approved amendments and subdivisions/plats, and final decisions granting variances of conditional uses under local shoreland management controls must be sent to the Commissioner or the Commissioner's designated representative and postmarked within ten (10) days of final action.
- D. Administration And Enforcement Official: The Zoning Administrator is responsible for the administration and enforcement of this chapter.
- E. Violation; Penalty: Any violation of the provisions of this chapter, or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances of conditional uses), shall constitute a misdemeanor and shall be punishable as defined by law. Violations of this chapter can occur regardless of whether or not a permit is required for a regulated activity pursuant to subsection A of this section. (Ord. 108, 9-20-1994)

13-4-5: SHORELAND CLASSIFICATION SYSTEM AND LAND USE DISTRICTS:

- A. Shoreland Classification System: The public waters of the city have been classified in this subsection consistent with the criteria found in Minnesota Regulations Part 6120.3300, and the "Protected Waters Inventory Map for Anoka County, Minnesota". The shoreland area for the water bodies listed in subsections A1 and A2 of this section shall be as defined in Section 13-4-3 of this chapter, definition of "shoreland", and as shown on the official zoning map.

	Protected Waters Inventory ID Number
1. Lakes:	
a. Natural environment lakes	
b. Recreational development lakes	
Unnamed T32N, R24W	DNR ID #2-74W
Ward Lake T32N, R24W	DNR ID #2-85P
Unnamed T32N, R24W	DNR ID #2-86W
Unnamed T32N, R24W	DNR ID #2-87W
(Lake Leeman) Unnamed T32N, R24W	DNR ID #2-88W
Bunker Lake T32N, R24W	DNR ID #2-90P
c. General development lakes	
Crooked Lake T32N, R24W	DNR ID #2-8P
Round Lake T32N, R24W	DNR ID #2-89P

2. Rivers And Streams:

- a. Remote rivers: none.
- b. Forested rivers: none.
- c. Transition rivers: none.
- d. Agricultural rivers: none.
- e. Urban rivers: none.
- f. Tributary streams: none.

All protected watercourses in the city shown on the "Protected Water Inventory Map for Anoka County", a copy of which is hereby adopted by reference, not given a classification in Subsections A2a through A2e of this section shall be considered "tributary".

B. Land Use District Descriptions:

1. Criteria For Designation: The land use districts in Subsection B2 of this section and the delineation of a land use district's boundaries on the official zoning map must be consistent with the goals, policies, and objectives of the Comprehensive Land Use Plan and the following criteria, considerations, and objectives:

a. General Considerations And Criteria For All Land Uses:

- (1) Preservation of natural areas;
- (2) Present ownership and development of shoreland areas;
- (3) Shoreland soil types and their engineering capabilities;
- (4) Topographic characteristics;
- (5) Vegetative cover;
- (6) In-water physical characteristics, values, and constraints;
- (7) Recreational use of the surface water;
- (8) Road and service center accessibility;
- (9) Socioeconomic development needs and plans as they involve water and related land resources;
- (10) The land requirements of industry which, by its nature, requires location in shoreland areas; and
- (11) The necessity to preserve and restore certain areas having significant historical or ecological value.

b. Factors And Criteria For Planned Unit Developments:

- (1) Existing recreational use of the surface waters and likely increases in use associated with planned unit developments;
- (2) Physical and aesthetic impacts of increased density;
- (3) Suitability of lands for the Planned Unit Development in the area; and
- (4) Level of current development in the area.
- (5) Amount and types of ownership of undeveloped lands.

2. District Descriptions: These land use districts are in conformance with the criteria specified in Minnesota Regulations Part 6120.3200, Subpart 3:

a. Land Use Districts For Lakes:

(1) Land Use District Uses (R1, R2, R3, R4):

	General Development Lakes	Recreational Development Lakes	Natural Environment Lakes
Single residential	P	P	P
Semipublic	C	C	C
Parks and historic sites	C	C	C
Extractive use	C	C	C
Forest management	P	P	P
Mining of metallic minerals and peat	C	C	C

(2) High Density Residential District Uses (R5, M-1 And M-2):

	General Development Lakes	Recreational Development Lakes	Natural Environment Lakes
Residential Planned Unit Developments	C	C	C
Surface water oriented commercial*	C	C	C
Semipublic	C	C	C
Parks and historic sites	C	C	C
Duplex, triplex, quad residential	P	P	P
Forest management	P	P	P

(3) Water Oriented Commercial District Uses (GR, LB, NB, GB):

	General Development Lakes	Recreational Development Lakes	Natural Environment Lakes
Surface water oriented commercial	P	P	P
Commercial Planned Unit Development**	C	C	C
Public, semipublic	C	C	C
Parks and historic sites	C	C	C
Forest management	P	P	P

(4) General Use District Uses (GR, LB, NB, I):

	General Development Lakes	Recreational Development Lakes	Natural Environment Lakes
Commercial	P	P	P
Commercial planned unit development**	C	C	C
Industrial	C	C	C
Public, semipublic	P	P	P
Extractive use	C	C	C
Parks and historic sites	C	C	C
Forest management	P	P	P
Mining of metallic minerals and peat	C	C	C

*As accessory to a residential Planned Unit Development.

**Limited expansion of a commercial Planned Unit Development involving up to six (6) additional dwelling units or sites may be allowed as a permitted use provided the provisions of Section 13-4-9 of this chapter are satisfied.

b. Land Use Districts For Rivers And Streams: The land use districts for rivers and streams (remote, forested, transition, agricultural, urban and tributary) shall comply with the land use district provisions as specified in Sections 12-13-1, 12-13-2 and 12-13-3 of this code.

3. Use And Upgrading Of Inconsistent Land Use Districts:

a. The land use districts adopted in Title 12, Chapter 3 of this code, as they apply to shoreland areas, and their delineated boundaries on the official zoning map, may be found to be inconsistent with the land use district designation criteria specified in Subsection B2 of this section. These inconsistent land use district designations may continue until revisions are proposed to change either the land use district designation within an existing land use district boundary shown on the official zoning map or to modify the boundary of an existing land use district shown on the official zoning map.

b. When revision is proposed to any inconsistent land use district provision, the following additional criteria and procedures shall apply:

(1) Lakes: When a revision to a land use district designation on a lake is considered, the land use district boundaries and use provisions therein for all the shoreland areas within the jurisdiction of this chapter on said lake must be revised to make them substantially compatible with the framework in Subsections B1 and B2 of this section.

(2) Rivers And Streams: When a revision to a land use district designation on a river or stream is proposed, the land use district boundaries and the use provisions therein for all shoreland on both sides of the river or stream within the same classification within the jurisdiction of this chapter must be revised to make them substantially compatible with the framework in Subsections B1 and B2 of this section. If the same river classification is contiguous for more than a five (5) mile segment only, the shoreland for a distance of two and one-half (2.5) miles upstream and downstream, or to the class boundary if closer, need be evaluated and revised.

c. When an interpretation question arises about whether a specific land use fits within a given "use" category, the interpretation shall be made by the Board of Adjustment. When a question arises as to whether a land use district's boundaries are properly delineated on the official zoning map, this decision shall be made by the City Council.

d. When a revision is proposed to an inconsistent land use district provision by an individual party or landowner, this individual party or landowner will only be responsible to provide the supporting and/or substantiating information for the specific parcel in question. The Planning and Zoning Commission will direct the Zoning Administrator to provide such additional information for this water body as is necessary to satisfy Subsections B3a and B3b of this

section.

e. The City Council must make detailed findings of fact and conclusion when taking final action that this revision and the upgrading of any inconsistent land use district designation on said water body are consistent with the enumerated criteria and use provisions of this Subsection B. (Ord. 108, 9-20-1994)

13-4-6: **ZONING AND WATER SUPPLY/SANITARY PROVISIONS:**

- A. Lot Area And Width Standards: The lot area (in square feet) and lot width standards (in feet) for single, duplex, triplex and quad residential lots created after the date of enactment of this chapter for the lake and river/stream classifications are the following:

1. Unsewered Lakes:

a. Natural Environment:

	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	108,900	300	108,900	300
Duplex	120,000	300	160,000	400
Triplex	160,000	400	240,000	600
Quad	180,000	500	320,000	800

b. Recreational Development:

	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	108,900	300	108,900	300
Duplex	108,900	300	108,900	300
Triplex	120,000	300	120,000	375
Quad	160,000	375	160,000	490

c. General Development:

	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	20,000	100	40,000	150
Duplex	40,000	180	80,000	265
Triplex	60,000	260	120,000	375
Quad	80,000	340	160,000	490

2. Sewered Lakes:

a. Natural Environment:

	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	40,000	125	20,000	125
Duplex	70,000	225	35,000	220
Triplex	100,000	325	52,000	315
Quad	130,000	425	65,000	410

b. Recreational Development:

	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	20,000	80	15,000	80
Duplex	35,000	135	26,000	135
Triplex	50,000	195	38,000	190
Quad	65,000	255	49,000	245

c. General Development:

	Riparian Lots		Nonriparian Lots	
	Area	Width	Area	Width
Single	15,000	80	11,400	80
Duplex	26,000	135	26,000	135
Triplex	38,000	195	25,000	190
Quad	49,000	255	32,500	245

3. River/Stream Lot Width Standards: There are no minimum lot size requirements for rivers and streams. The lot width standards for single, duplex, triplex and quad residential developments for the six (6) river/stream classifications are:

	Remote	Forested	Transition	Agricultural	Urban And No Sewer	Tributary Sewer
Single	300	200	250	150	100	80
Duplex	450	300	375	225	150	115
Triplex	600	400	500	300	200	150
Quad	750	500	625	375	250	190

4. Additional Special Provisions:

a. Residential subdivisions with dwelling unit densities exceeding those in the tables in Subsections A2 and A3 of this section can only be allowed if designed and approved as residential Planned Unit Developments under Section 13-4-9 of this chapter. Only land above the ordinary high water level of public waters can be used to meet lot area standards, and lot width standards must be met at both the ordinary high water level and at the building line. The sewer lot area dimensions in Subsection A2 of this section can only be used if publicly owned sewer system service is available to the property.

b. Subdivisions of duplexes, triplexes, and quads on natural environment lakes must also meet the following standards: (Ord. 108, 9-20-1994)

(1) Each building must be set back at least one hundred fifty feet (150') from the ordinary high water level; (Ord. 108, 9-20-1994; amd. 2003 Code)

(2) Each building must have common sewage treatment and water systems in one location and serve all dwelling units in the building;

(3) Watercraft docking facilities for each lot must be centralized in one location and serve all dwelling units in the building; and

(4) No more than twenty five percent (25%) of a lake's shoreline can be in duplex, triplex, or quad developments.

c. One guest cottage may be allowed on lots meeting or exceeding the duplex lot area and width dimensions presented in Subsections A1, A2 and A3 of this section, provided the following standards are met:

(1) For lots exceeding the minimum lot dimensions of duplex lots, the guest cottage must be located within the smallest duplex sized lot that could be created including the principal dwelling unit;

(2) A guest cottage must not cover more than seven hundred (700) square feet of land surface and must not exceed fifteen feet (15') in height; and

(3) A guest cottage must be located or designed to reduce its visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks,

or color, assuming summer leaf-on conditions.

(4) Meets the requirements of Section 12-14-16 of this code.

d. Lots intended as controlled accesses to public waters or as recreation areas for use by owners of nonriparian lots within subdivisions are permissible and must meet or exceed the following standards:

(1) They must meet the width and size requirements for residential lots, and be suitable for the intended uses of controlled access lots.

(2) If docking, mooring, or over-water storage of more than six (6) watercraft is to be allowed at a controlled access lot, then the width of the lot (keeping the same lot depth) must be increased by the percent of the requirements for riparian residential lots for each watercraft beyond six (6), consistent with the following table:

CONTROLLED ACCESS LOT FRONTAGE REQUIREMENTS

<u>Ratio of Lake Size To Shore Length (Acres/Miles)</u>	<u>Required Increase In Frontage (Percent)</u>
Less than 100	25
100 – 200	20
201 – 300	15
301 – 400	10
Greater than 400	5

(3) They must be jointly owned by all purchasers of lots in the subdivision who are provided riparian access rights on the access lot; and

(4) Covenants or other equally effective legal instruments must be developed that specify which lot owners have authority to use the access lot and what activities are allowed. The activities may include watercraft launching, loading, storage, beaching, mooring, or docking. They must also include other outdoor recreational activities that do not significantly conflict with general public use of the public water or the enjoyment of normal property rights by adjacent property owners. Examples of the non-significant conflict activities include swimming, sunbathing, or picnicking. The covenants must limit the total number of vehicles allowed to be parked and the total number of watercraft allowed to be continuously moored, docked, or stored over water, and must require centralization of all common facilities and

activities in the most suitable locations on the lot to minimize topographic and vegetation alterations. They must also require all parking areas, storage buildings, and other facilities to be screened by vegetation or topography as much as practical from view from the public water, assuming summer leaf-on conditions.

B. Placement, Design And Height Of Structures:

1. Placement Of Structures On Lots: When more than one setback applies to a site, structures and facilities must be located to meet all setbacks. Where structures exist on the adjoining lots on both sides of a proposed building site, structure setbacks may be altered without a variance to conform to the adjoining setbacks from the ordinary high water level, provided the proposed building site is not located in a shore impact zone or in a bluff impact zone. Structures shall be located as follows:

a. Structure And On Site Sewage System Setbacks (In Feet) From Ordinary High Water Level*:

SETBACKS*

Classes Of Public Waters	Unsewered Structures	Sewered Structures	Sewage Treatment Systems
Lakes			
Natural Environment	150	150	150
Recreational Development	100	75	75
General Development	75	50	50
Rivers			
Remote	200	200	150
Forested and Transition	150	150	100
Agriculture, urban and tributary	100	50	75

*One water oriented accessory structure designed in accordance with Subsection B2 of this section may be set back a minimum distance of ten feet (10') from the ordinary high water level.

b. Additional Structure Setbacks: The following additional structure setbacks apply, regardless or the classification of the water body:

<u>Setback From:</u>	<u>Setback (In Feet)</u>
Top of bluff	30
Unplatted cemetery	50
Right-of-way line of federal, state, or county highway	50
Right-of-way line of city road, public street, or other roads or streets not classified	40

c. Bluff Impact Zones: Structures and accessory facilities, except stairways and landings, must not be placed within bluff impact zones.

d. Uses Without Water Oriented Needs: Commercial, industrial, public and semipublic uses without water oriented needs must be located on lots or parcels without public waters frontage or, if located on lots or parcels with public waters frontage, must either be set back double the normal ordinary high water level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

2. Design Criteria For Structures:

a. High Water Elevations: Structures must be placed in accordance with any floodplain regulations applicable to the site. Where these controls do not exist, the elevation to which the lowest floor, including basement, is placed or flood-proofed must be determined as follows:

(1) For lakes: by placing the lowest floor at a level at least three feet (3') above the highest known water level, or three feet (3') above the ordinary high water level, whichever is higher; (Ord. 108, 9-20-1994)

(2) For rivers and streams: by placing the lowest floor at least three feet (3') above the flood of record, if data is available; if data is not available, by placing the lowest floor at least three feet (3') above the ordinary high water level, or by conducting a technical evaluation to determine effects of proposed construction upon flood stages and flood flows and to establish a flood protection elevation. Under all three (3) approaches, technical evaluations must be done by a qualified engineer or hydrologist consistent with Minnesota Statutes Chapter 105, Minnesota Regulations Parts

6120.5000 to 6120.6200 governing the management of floodplain areas. If more than one approach is used, the highest flood protection elevation determined must be used for placing structures and other facilities; and (Ord. 108, 9-20-1994; amd. 2003 Code)

(3) Water oriented accessory structures may have the lowest floor placed lower than the elevation determined in this subsection if the structure is constructed of flood resistant materials to the elevation, electrical and mechanical equipment are placed above the elevation and, if long duration flooding is anticipated, the structure is built to withstand ice action and wind driven waves and debris.

b. Water Oriented Accessory Structures: Each lot may have one water oriented accessory structure not meeting the normal structure setback in Subsection B1 of this section if the water oriented accessory structure complies with the following provisions:

(1) The structure or facility must not exceed ten feet (10') in height, exclusive of safety rails, and cannot occupy an area greater than two hundred fifty (250) square feet. Detached decks must not exceed eight feet (8') above grade at any point;

(2) The setback of the structure or facility from the ordinary high water level must be at least ten feet (10');

(3) The structure or facility must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks or color, assuming summer, leaf-on conditions;

(4) The roof may be used as a deck with safety rails but must not be enclosed or used as a storage area;

(5) The structure or facility must not be designed or used for human habitation and must not contain water supply or sewage treatment facilities; and

(6) As an alternative for general development and recreational development water bodies, water oriented accessory structures used solely for watercraft storage, and including storage of related boating and water oriented sporting equipment, may occupy an area up to four hundred (400) square feet, provided the maximum width of the structure is twenty feet (20') as measured parallel to the configuration of the shoreline.

c. Stairways, Lifts And Landings: Stairways and lifts are the preferred alternative to major topographic alteration for achieving access up and down bluffs and steep slopes to shore areas. Stairways and lifts must meet the following design requirements:

(1) Landings for stairways and lifts on residential lots must not exceed thirty-two (32) square feet in area. Landings larger than thirty-two (32) square feet may be used for commercial properties, public open space recreational properties, and Planned Unit Developments;

(2) Canopies or roofs are not allowed on stairways, lifts, or landings;

(3) Stairways, lifts, and landings may be either constructed above the ground on posts or pilings or placed into the ground, provided they are designed and built in a manner that ensures control of soil erosion;

(4) Stairways, lifts, and landings must be located in the most visually inconspicuous portions of lots whenever practical, as viewed from the surface of the public water assuming summer, leaf-on conditions; and

(5) Facilities such as ramps, lifts, or mobility paths for physically handicapped persons are also allowed for achieving access to shore areas; provided, that the dimensional and performance standards of Subsections B2c(1) through B2c(4) of this section are complied with in addition to the requirements of Minnesota Regulations Chapter 1340.

d. Significant Historic Sites: No structure may be placed on a significant historic site in a manner that affects the value of the site unless adequate information about the site has been removed and documented in a public repository.

e. Steep Slopes: The Zoning Administrator must evaluate possible soil erosion impacts and development visibility from public waters before issuing a permit for construction of sewage treatment systems, roads, driveways, structures, or other improvements on steep slopes. When determined necessary, conditions must be attached to issued permits to prevent erosion and to preserve existing vegetative screening of structures, vehicles, and other facilities as viewed from the surface of public waters, assuming summer, leaf-on vegetation.

3. Height Of Structures: All structures in city residential districts, except churches and nonresidential agricultural structures, must not exceed twenty-five feet (25') in height.
- C. Shoreland Alterations: Alterations of vegetation and topography will be regulated to prevent erosion into public waters, fix nutrients, preserve shoreland aesthetics, preserve historic values, prevent bank slumping, and protect fish and wildlife habitat.
1. Vegetation Alterations:
- a. Vegetation alteration necessary for the construction of structures and sewage treatment systems and the construction of roads and parking areas regulated by Subsection D of this section are exempt from the vegetation alteration standards that follow.
 - b. Removal or alteration of vegetation, except for agricultural and forest management uses as regulated in Subsections F2 and F3 of this section, respectfully, is allowed subject to the following standards:
 - (1) Intensive vegetation clearing within the shore and bluff impact zones and on steep slopes is not allowed. Intensive vegetation clearing for forest land conversion to another use outside of these areas is allowable as a conditional use if an erosion control and sedimentation plan is developed and approved by the Soil and Water Conservation District in which the property is located.
 - (2) In shore and bluff impact zones and on steep slopes, limited clearing of trees and shrubs and cutting, pruning, and trimming of trees is allowed to provide a view to the water from the principal dwelling site and to accommodate the placement of stairways and landings, picnic areas, access paths, livestock watering areas, beach and watercraft access areas, and permitted water oriented accessory structures or facilities; provided, that:
 - (A) The screening of structures, vehicles, or other facilities as viewed from the water, assuming summer, leaf-on conditions, is not substantially reduced;
 - (B) Along rivers, existing shading of water surfaces is preserved; and
 - (C) The above provisions are not applicable to the removal of trees, limbs, or branches that are dead, diseased, or pose safety hazards.

2. Topographic Alterations/Grading And Filling:

- a. Grading and filling and excavations necessary for the construction of structures, sewage treatment systems, and driveways under validly issued construction permits for these facilities do not require the issuance of a separate grading and filling permit. However, the grading and filling standards in this section must be incorporated into the issuance of permits for construction of structures, sewage treatment systems, and driveways.
- b. Public roads and parking areas are regulated by Subsection D of this section.
- c. Notwithstanding Subsections C2a and C2b of this section, a grading and filling permit will be required for:
 - (1) The movement of more than ten (10) cubic yards of material on steep slopes or within shore or bluff impact zones; and
 - (2) The movement of more than fifty (50) cubic yards of material outside of steep slopes and shore and bluff impact zones.
- d. The following considerations and conditions must be adhered to during the issuance of construction permits, grading and grading and filling permits, conditional use permits, variances and subdivision approvals:
 - (1) Grading or filling in any type 2, 3, 4, 5, 6, 7, or 8 wetland must be evaluated to determine how extensively the proposed activity would affect the following functional qualities of the wetland*:
 - (A) Sediment and pollutant trapping and retention;
 - (B) Storage of surface runoff to prevent or reduce flood damage;
 - (C) Fish and wildlife habitat;
 - (D) Recreational use;
 - (E) Shoreline or land stabilization; and
 - (F) Noteworthiness, including special qualities such

as historic significance, critical habitat for endangered plants and animals, or others.

*This evaluation must also include a determination of whether the wetland alteration determination being proposed requires permits, reviews, or approvals by other local, state, or federal agencies such as a watershed district, the Minnesota Department of Natural Resources, or the United States Army Corps of Engineers. The applicant will be so advised.

(2) Alterations must be designed and conducted in a manner that ensures only the smallest amount of bare ground is exposed for the shortest time possible;

(3) Mulches or similar materials must be used, where necessary, for temporary bare soil coverage, and a permanent vegetative cover must be established as soon as possible;

(4) Methods to minimize soil erosion and to trap sediments before they reach any surface water feature must be used;

(5) Altered areas must be stabilized to acceptable erosion control standards consistent with the field office technical guides of the local Soil and Water Conservation Districts and the United States Soil Conservation Service;

(6) Fill or excavated material must not be placed in a manner that creates an unstable slope;

(7) Plans to place fill or excavated material on steep slopes must be reviewed by qualified professionals for continued slope stability and must not create finished slopes of thirty percent (30%) or greater;

(8) Fill or excavated material must not be placed in bluff impact zones; (Ord. 108, 9-20-1994)

(9) Any alterations below the ordinary high water level of public waters must first be authorized by the Commissioner under Minnesota Statutes 103G.245 and 103G.405; (Ord. 108, 9-20-1994; amd. 2003 Code)

(10) Alteration of topography must only be allowed if it is accessory to permitted or conditional uses and does not adversely affect adjacent or nearby properties; and

(11) Placement of natural rock riprap, including associated grading of the shoreline and placement of a filter blanket, is permitted if the finished slope does not exceed three feet (3') horizontal to one foot (1') vertical, the landward extent of the riprap is within ten feet (10') of the ordinary high water level, and the height of the riprap above the ordinary high water level does not exceed three feet (3').

e. Excavations where the intended purpose is connection to a public water, such as boat slips, canals, lagoons, and harbors, must be controlled by local shoreland controls. Permission for excavations may be given only after the Commissioner has approved the proposed connection to public waters.

D. Placement And Design Of Roads, Driveways And Parking Areas:

1. Public and private roads and parking areas must be designed to take advantage of natural vegetation and topography to achieve maximum screening from view from public waters. Documentation must be provided by a qualified individual that all roads and parking areas are designed and constructed to minimize and control erosion to public waters consistent with the field office technical guides of the local Soil and Water Conservation District, or other applicable technical materials.

2. Roads, driveways, and parking areas must meet structure setbacks and must not be placed within bluff and shore impact zones, when other reasonable and feasible placement alternatives exist. If no alternatives exist, they may be placed within these areas, and must be designed to minimize adverse impacts.

3. Public and private watercraft access ramps, approach roads, and access related parking areas may be placed within shore impact zones, provided the vegetative screening and erosion control conditions of this subsection are met. For private facilities, the grading and filling provisions of Subsection C2 of this section must be met.

E. Storm Water Management: The following general and specific standards shall apply:

1. General Standards:

a. When possible, existing natural drainageways, wetlands, and vegetated soil surfaces must be used to convey, store, filter, and retain storm water runoff before discharge to public waters.

b. Development must be planned and conducted in a manner that will minimize the extent of disturbed areas, runoff velocities, erosion potential, and reduce and delay runoff volumes. Disturbed areas

must be stabilized and protected as soon as possible and facilities or methods used to retain sediment on the site.

c. When development density, topographic features, and soil and vegetation conditions are not sufficient to adequately handle storm water runoff using natural features and vegetation, various types of constructed facilities such as diversions, settling basins, skimming devices, dikes, waterways, and ponds may be used. Preference must be given to designs using surface drainage, vegetation, and infiltration rather than buried pipes and manmade materials, and facilities.

2. Specific Standards:

a. Impervious surface coverage of lots must not exceed twenty five percent (25%) of the lot area.

b. When constructed facilities are used for storm water management, documentation must be provided by a qualified individual that they are designed and installed consistent with the field office technical guide of the local soil and water conservation districts.

c. New constructed storm water outfalls to public waters must provide for filtering or settling of suspended solids and skimming of surface debris discharge.

F. Special Provisions:

1. Standards For Commercial, Industrial, Public And Semipublic Uses:

a. Surface water oriented commercial uses and industrial, public, or semipublic uses with similar need to have access to and use of public waters may be located on parcels or lots with frontage on public waters. Those uses with water-oriented needs must meet the following standards:

(1) In addition to meeting impervious coverage limits, setbacks, and other zoning standards in this chapter, the uses must be designed to incorporate topographic and vegetative screening of parking areas and structures;

(2) Uses that require short term watercraft mooring for patrons must centralize these facilities and design them to avoid obstructions to navigation and to be the minimum size necessary to meet the need; and

(3) Uses that depend on patrons arriving by watercraft may

use signs and lighting to convey needed information to the public, subject to the following general standards:

(A) In addition to meeting the sign requirements of Section 12-14-9 of this code, no advertising sign or supporting facilities for signs may be placed in or upon any public waters. Signs conveying information or safety messages may be placed in or on public waters by a public authority or under a permit issued by the city or its duly designated agency;

(B) Signs may be placed, when necessary, within the shore impact zone if they are designed and sized to be the minimum necessary to convey needed information. They must only convey the location and name of the establishment and the general types of goods or services available. The sign must not contain other detailed information such as product brands and prices, must not be located higher than ten feet (10') above the ground, and must not exceed thirty-two (32) square feet in size. If illuminated by artificial lights, the lights must be shielded or directed to prevent illumination out across public waters; and

(C) Other outside lighting may be located within the shore impact zone or over public waters if it is used primarily to illuminate potential safety hazards and is shielded or otherwise directed to prevent direct illumination out across public waters. This does not preclude use of navigational lights.

b. Uses without water oriented needs must be located on lots or parcels without public waters frontage or, if located on lots or parcels with public water frontage, must either be set back double the normal ordinary high water mark level setback or be substantially screened from view from the water by vegetation or topography, assuming summer, leaf-on conditions.

2. Agricultural Use Standards:

a. General cultivation, farming, grazing, nurseries, horticulture, truck farming, sod farming, and wild crop harvesting are permitted uses if steep slopes or shore impact zones are maintained in permanent vegetation or operated under an approved conservation plan (resource management systems) consistent with the field office technical guides of the local soil and water conservation districts or the United States Soil Conservation Service, as provided by a qualified individual or agency. The shore impact zone for

parcels with permitted agricultural land uses is equal to a line parallel to and fifty feet (50') from the ordinary high water level.

b. Animal feedlots must meet the following standards:

(1) New feedlots must not be located in the shoreland of watercourses or in bluff impact zones and must meet a minimum setback of three hundred feet (300') from the ordinary high water level of all public water basins; and

(2) Modifications or expansions to existing feedlots that are located within three hundred feet (300') of the ordinary high water level or within a bluff impact zone are allowed if they do not further encroach into the existing ordinary high water level setbacks, or encroach on bluff impact zones.

3. Forest Management Standards: The harvesting of timber and associated reforestation must be conducted consistent with the provisions of the "Minnesota Non-point Source Pollution Assessment-Forestry And Provisions Of Water Quality In Forest Management-Best Management Practices In Minnesota".

4. Extractive Use Standards:

a. Site Development And Restoration Plan: In addition to complying with the provisions of Section 12-8-5 of this code, an extractive use site development and restoration plan must be developed, approved, and followed over the course of operation of the site. The plan must address dust, noise, possible pollutant discharges, hours and duration of operation, and anticipated vegetation and topographic alterations. It must also identify topographic alterations and actions to be taken during operation to mitigate adverse environmental impacts, particularly erosion, and must clearly explain how the site will be rehabilitated after extractive activities end.

b. Setbacks Of Processing Machinery: Processing machinery must be located consistent with setback standards for structures from ordinary high water levels of public waters and from bluffs.

5. Mining Of Metallic Minerals And Peat: Mining of metallic minerals and peat, as defined in Minnesota Statutes Sections 93.44 to 93.51, shall be a conditional use. The provisions of Minnesota Statutes Sections 93.44 to 93.51 must be satisfied.

G. Conditional Uses: Conditional uses allowable within the shoreland areas shall be subject to the review and approval procedures and criteria and conditions for review of conditional uses established in Section 12-15-6 of

this code. The following additional evaluation criteria and conditions apply within shoreland areas:

1. Evaluation Criteria: A thorough evaluation of the water body and the topographic, vegetation, and soil conditions on the site must be made to ensure:

- a. The prevention of soil erosion or other possible pollution of public waters, both during and after construction;
- b. The visibility of structure and other facilities as viewed from public water is limited;
- c. The site is adequate for water supply and on-site sewage treatment; and
- d. The types, uses, and numbers of watercraft that the project will generate are compatible in relation to the suitability of public waters to safely accommodate these watercraft.

2. Conditions Attached To Conditional Use Permits: The City Council, upon consideration of the criteria listed above and the purposes of this chapter, shall attach such conditions to the issuance of the Conditional Use Permits as it deems necessary to fulfill the purposes of this chapter. Such conditions may include, but are not limited to, the following:

- a. Increased setbacks from the ordinary high water level;
- b. Limitations of the natural vegetation to be removed or the requirement that additional vegetation be planted; and
- c. Special provisions for the location, design, and use of structures, sewage treatment systems, watercraft launching and docking areas, and vehicle parking areas.

H. Water Supply And Sewage Treatment:

1. Water Supply: Any public or private supply of water for domestic purposes must meet or exceed standards for water quality of the Minnesota Department of Health and the Minnesota Pollution Control Agency.

2. Sewage Treatment¹: Any premises used for human occupancy must be provided with an adequate method of sewage treatment, as follows:

- a. Publicly owned sewer systems must be used where available.
(Ord. 108, 9-20-1994)

¹ See also sections 3-3-5, 10-2-3 and 12-12-4 and title 10, chapter 4 of this code.

b. All private sewage treatment systems must conform to the Minnesota Pollution Control Agency standards for individual sewage treatment systems contained in the document titled "Individual Sewage Treatment Systems Standards, Chapter 7080", a copy of which is hereby adopted to be a part of this chapter, and a copy of which is on file in the office of the Building Official for public use and inspection. (Ord. 108, 9-20-1994; amd. 2003 Code)

c. On site sewage treatment systems must be set back from the ordinary high water level in accordance with the setbacks contained in Subsection B1 of this section.

d. All proposed sites for individual sewage treatment systems shall be evaluated in accordance with the criteria in the following Subsections H2d(1) through H2d(4). If the determination of the site's suitability cannot be made with publicly available existing information, it shall then be the responsibility of the applicant to provide sufficient soil boring and percolation tests from on-site field investigations. Evaluation criteria is as follows:

(1) Depth to the highest known or calculated ground water table or bedrock.

(2) Soil conditions, properties, and permeability.

(3) Slope.

(4) The existence of lowlands, local surface depressions, and rock outcrops.

e. Nonconforming sewage treatment systems shall be regulated and upgraded in accordance with Subsection 13-4-7C of this chapter. (Ord. 108, 9-20-1994)

13-4-7: **NONCONFORMITIES:** All legally established nonconformities as of the effective date of this chapter may continue, but they will be managed according to applicable state statutes and other regulations of the city for the subjects of: alterations and additions, repair after damage, discontinuance of use, and intensification of use; except, that the following standards will also apply in shoreland areas:

A. Construction On Nonconforming Lots Of Record:

1. Lots of record in the office of the County Recorder on the date of the enactment of local shoreland controls that do not meet the requirements of Subsection 13-4-6A of this chapter may be allowed as building sites without variances from lot size requirements, provided the use is permitted

in the zoning district, the lot has been in separate ownership from abutting lands at all times since it became substandard, was created compliant with official controls in effect at the time, and sewage treatment and setback requirements of this chapter are met.

2. A variance from setback requirements must be obtained before any use, sewage treatment system, or building permit is issued for a lot. In evaluating the variance, the board of adjustments shall consider sewage treatment and water supply capabilities or constraints of the lot, and shall deny the variance if adequate facilities cannot be provided.

3. If, in a group of two (2) or more contiguous lots under the same ownership, any individual lot does not meet the requirements of Subsection 13-4-6A of this chapter, the lot must not be considered as a separate parcel of land for the purposes of sale or development. The lot must be combined with one or more contiguous lots so they equal one or more parcels of land, each meeting the requirements of said Subsection 13-4-6A as much as possible. (Ord. 108, 9-20-1994)

B. Additions/Expansions To Nonconforming Structures:

1. All additions or expansions to the outside dimensions of an existing nonconforming structure must meet the setback, height, and other requirements of Section 13-4-6 of this chapter. Any deviation from these requirements must be authorized by a variance. (Ord. 108, 9-20-1994; amd. 2003 Code)

2. Deck additions may be allowed without a variance to a structure not meeting the required setback from the ordinary high water level if all of the following criteria and standards are met:

- a. The structure existed on the date the structure setbacks were established;
- b. A thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;
- c. The deck encroachment toward the ordinary high water level does not exceed fifteen percent (15%) of the existing setback of the structure from the ordinary high water level or does not encroach closer than thirty feet (30'), whichever is more restrictive; and
- d. The deck is constructed primarily of wood, and is not roofed or screened.

C. Nonconforming Sewage Treatment Systems:

1. A sewage treatment system not meeting the requirements of Subsection 13-4-6H of this chapter must be upgraded, at a minimum, at any time a permit or variance of any type is required for any improvement on, or use of the property. For the purposes of this provision, a sewage treatment system shall not be considered nonconforming if the only deficiency is the sewage treatments system's improper setback from the ordinary high water level. (Ord. 108, 9-20-1994)

2. The City Council has, by formal resolution, notified the Commissioner of its program to identify nonconforming sewage treatment systems. The City will require upgrading or replacement of any nonconforming system identified by this program within a reasonable period of time that will not exceed two (2) years. Sewage systems installed according to all applicable local shoreland management standards adopted under Minnesota Statutes Section 103F.211, in effect at the time of installation, may be considered as conforming unless they are determined to be failing; except that systems using cesspools, leaching pits, seepage pits, or other deep disposal methods, or systems with less soil treatment area separation above ground water than required by the Minnesota Pollution Control Agency Chapter 7080 for design of on site sewage treatment systems, shall be considered nonconforming. (Ord. 108, 9-20-1994; amd. 2003 Code)

13-4-8: **SUBDIVISION AND PLATTING PROVISIONS¹:**

- A. Land Suitability: Each lot created through subdivision, including Planned Unit Developments authorized under Section 13-4-9 of this chapter, must be suitable in its natural state for the proposed use with minimal alteration. Suitability analysis by the City Council shall consider susceptibility to flooding, existence of wetlands, soil and rock formations with severe limitations for development, severe erosion potential, steep topography, inadequate water supply or sewage treatment capabilities, near shore aquatic conditions unsuitable for water based recreation, important fish and wildlife habitat, presence of significant historic sites, or any other feature of the natural land likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.
- B. Consistency With Other Controls: Subdivisions must conform to all official controls of the community. A subdivision will not be approved where a later variance from one or more standards in official controls would be needed to use the lots for their intended purpose. In areas not served by publicly owned sewer and water systems, a subdivision will not be

¹ See also section 12-12-6 of this code.

approved unless domestic water supply is available and a sewage treatment system consistent with Subsections 13-4-6B and H of this chapter can be provided for every lot. Each lot shall meet the minimum lot size and dimensional requirements of Subsection 13-4-6A of this chapter, including at least a minimum contiguous lawn area, that is free of limiting factors sufficient for the construction of two (2) standard soil treatment systems. Lots that would require use of holding tanks must not be approved.

C. Information Requirements: Sufficient information must be submitted by the applicant for the community to make a determination of land suitability. The information shall include at least the following:

1. Topographic contours at ten-foot (10') intervals or less from United States geological survey maps or more accurate sources, showing limiting site characteristics;
2. The surface water features required in Minnesota Statutes Section 505.02, Subdivision 1, to be shown on plats obtained from United States Geological Survey quadrangle topographic maps or more accurate sources;
3. Adequate soils information to determine suitability for building and on-site sewage treatment capabilities for every lot from the most current existing sources or from field investigations such as soil borings, percolation tests, or other methods;
4. Information regarding adequacy of domestic water supply; extent of anticipated vegetation and topographic alterations; near shore aquatic conditions, including depths, types of bottom sediments, and aquatic vegetation; and proposed methods for controlling storm water runoff and erosion, both during and after construction activities;
5. Location of 100-year floodplain areas and floodway districts from existing adopted maps or data; and
6. A line or contour representing the ordinary high water level, the "toe" and the "top" of bluffs, and the minimum building setback distances from the top of the bluff and the lake or stream.

D. Dedications: When a land or easement dedication is a condition of subdivision approval, the approval must provide easement over natural drainage or ponding areas for management of storm water and significant wetlands.

E. Platting:

1. All subdivisions that create five (5) or more lots or parcels that are two and one-half (2 1/2) acres or less in size shall be processed as a plat in accordance with Minnesota Statutes Chapter 505. No permit for construction of buildings or sewage treatment systems shall be issued for lots created after these official controls were enacted, unless the lot was approved as part of a formal subdivision. (Ord. 108, 9-20-1994)

2. Shoreland Plats: All plats in shoreland areas shall be submitted to and reviewed by the State Division of Waters, Soils and Minerals before final action by the City. (Amended Ord. 8, 10-21-1970)

F. Controlled Access Or Recreational Lots: Lots intended as controlled access to public waters or for recreation use areas for use by nonriparian lots within a subdivision must meet or exceed the sizing criteria in Subsection 13-4-6A4 of this chapter. (Ord. 108, 9-20-1994)

13-4-9: PLANNED UNIT DEVELOPMENTS (PUDS)¹:

A. Types Of PUDs Permissible: Planned Unit Developments (PUDs) are allowed for new projects on undeveloped land, redevelopment of previously built sites, or conversions of existing buildings and land. The land use districts in which they are an allowable use are identified in the land use district descriptions in Subsection 13-4-5B of this chapter and per Title 12, Chapter 12 of this code.

B. Processing PUDs: Planned Unit Developments must be processed as a conditional use. The expansion to an existing commercial PUD involving six (6) or less new dwelling units or sites since the date this chapter was adopted is permissible, provided an Amended Conditional Use Permit is granted and the total project density does not exceed the allowable densities calculated in the project density evaluation procedures in Subsection E of this section. The provisions of Title 12, Chapter 12 and Section 12-15-6 of this code shall apply. Approval cannot occur until the Environmental Review Process (EAW/EIS) is complete.

C. Application For PUD: The applicant for a PUD must submit the following documents (in addition to the requirements as specified in Title 11 and Title 12, chapter 12 of this code) prior to final action being taken on the application request:

1. A site plan and/or plat for the project showing location of property boundaries, surface water features, existing and proposed structures and

¹ See also chapter 3 of this title.

other facilities, land alteration, sewage treatment and water supply systems (where public systems will not be provided), and topographic contours at ten foot (10') intervals or less. When a PUD is a combined commercial and residential development, the site plan/plat must indicate and distinguish which buildings and portions of the project are residential, commercial, or a combination of the two (2).

2. A property owner association agreement (for residential PUDs) with mandatory membership, all in accordance with the requirements of Subsection F of this section.

3. Deed restriction, covenants, permanent easement, or other instruments that:

- a. Properly address future vegetative and topographic alterations, construction of additional buildings, beaching of watercraft, and construction of commercial buildings in residential PUDs; and
- b. Ensure the long-term preservation and maintenance of open space in accordance with the criteria and analysis specified in Subsection F of this section.

4. When necessary, a master plan/drawing describing the project and the floor plan for all commercial structures to be occupied.

5. Those additional documents as requested by the Planning and Zoning Commission and City Council that are necessary to explain how the PUD will be designed and will function.

D. Site Suitable Area Evaluation: Proposed new or expansions to existing Planned Unit Developments must be evaluated using the following procedures and standards to determine the suitable area for the dwelling unit/dwelling site density evaluation in Subsection E of this section.

1. The project parcel must be divided into tiers by locating one or more lines approximately parallel to a line that identifies the ordinary high water level at the following intervals, proceeding landward:

SHORELAND TIER DIMENSIONS

	Unsewered (Feet)	Sewered (Feet)
General development lakes		
First tier	200	200
Second and additional tiers	267	200

Recreational development lakes	267	267
Natural environment lakes	400	320
All river classes	300	300

2. The suitable area within each tier is next calculated by excluding from the tier area all wetlands, bluffs, or land below the ordinary high water level of public waters. This suitable area and the proposed project are then subjected to either the residential or commercial Planned Unit Development density evaluation steps to arrive at an allowable number of dwelling units or sites.

- E. Residential And Commercial PUD Density Evaluation: The procedures for determining the base density of a PUD and density increase multipliers are as follows: allowable densities may be transferred from any tier to any other tier further from the water body, but must not be transferred to any other tier closer.

1. Commercial PUD Base Density Evaluation: The suitable area within each tier is divided by the single residential lot size standard for lakes or, for rivers, the single residential lot width standard times the tier depth, unless the City Council has specified an alternative minimum lot size for rivers which shall then be used to yield a base density of dwelling units or sites for each tier. Proposed location and numbers of dwelling units or sites for the residential Planned Unit Developments are then compared with the tier, density, and suitability analysis herein and the design criteria in Subsection F of this section.

2. Commercial PUD Base Density Evaluation:

- a. Determine the average inside living area size of dwelling units or sites within each tier, including both existing and proposed units and sites. Computation of inside living area sizes need not include decks, patios, stoops, steps, garages, or porches and basements, unless they are habitable space.
- b. Select the appropriate floor area ratio from the following table:

Sewered General Development Lakes: First Tier On Unsewered General Development	Second And Additional Tiers On Unsewered General Development Lakes; Recreational Development	Natural Environment
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*Average Unit Floor Area (Sq. Ft.)	Lakes; Urban, Agricultural, Tributary River <u>Segments</u>	Lakes; Transition And Forested <u>River Segments</u>	Lakes And Remote River <u>Segments</u>
200	0.040	0.020	0.010
300	0.048	0.024	0.012
400	0.056	0.028	0.014
500	0.065	0.032	0.016
600	0.072	0.038	0.019
700	0.082	0.042	0.021
800	0.091	0.046	0.023
900	0.099	0.050	0.025
1,000	0.108	0.054	0.027
1,100	0.116	0.058	0.029
1,200	0.125	0.064	0.032
1,300	0.133	0.068	0.034
1,400	0.142	0.072	0.036
1,500	0.150	0.075	0.038

*For average unit floor areas less than shown, use the floor area ratios listed for 200 square feet. For areas greater than shown, use the ratios listed for 1,500 square feet. For recreational camping areas, use the ratios listed at 400 square feet. Manufactured home sites in recreational camping areas shall use a ratio equal to the size of the manufactured home or, if unknown, the ratio listed for 1,000 square feet.

c. Multiply the suitable area within each tier by the floor area ratio to yield total floor area for each tier allowed to be used for dwelling units or sites.

d. Divide the total floor area by tier computed in Subsection E2c of this section by the average inside living area size determined in Subsection E2a of this section. This yields a base number of dwelling units and sites for each tier.

e. Proposed locations and numbers of dwelling units or sites for the commercial Planned Unit Development are then compared with the tier, density and suitability analysis herein and the design criteria in Subsection F of this section.

3. Density Increase Multipliers:

a. Increases to the dwelling unit or dwelling site base densities

previously determined are allowable if the dimensional standards in Section 13-4-6 of this chapter are met or exceeded and the design criteria in Subsection F of this section are satisfied. The allowable density increases in Subsection E3b of this section will only be allowed if structure setbacks from the ordinary high water level are increased to at least fifty percent (50%) greater than the minimum setback, or the impact on the water body is reduced an equivalent amount through vegetative management, topography, or additional means acceptable to the City Council, and the setback is at least twenty five percent (25%) greater than the minimum setback.

b. Allowable dwelling unit or dwelling site density increases of residential or commercial Planned Unit Developments:

<u>Density Evaluation Tiers</u>	<u>Maximum Density Increase Within Each Tier (Percent)</u>
First	50
Second	100
Third	200
Fourth	200
Fifth	200

F. Maintenance And Design Criteria:

1. Maintenance And Administration Requirements:

a. Before final approval of a Planned Unit Development, adequate provisions must be developed for preservation and maintenance in perpetuity of open spaces and for the continued existence and functioning of the development.

b. Deed restrictions, covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent preservation and maintenance of open space are required. The instruments must include all of the following protections:

- (1) Commercial uses prohibited (for residential PUDs);
- (2) Vegetation and topographic alteration other than routine maintenance prohibited;
- (3) Construction of additional buildings or storage of vehicles and other materials prohibited; and
- (4) Uncontrolled beaching of watercraft prohibited.

c. Unless an equally effective alternative community framework is established, when applicable, all residential Planned Unit Developments must use an owners' association with the following features:

- (1) Membership must be mandatory for each dwelling unit or site purchaser and any successive purchasers;
- (2) Each member must pay a pro rata share of the association's expenses, and unpaid assessments can become liens on units or sites;
- (3) Assessments must be adjustable to accommodate changing conditions; and
- (4) The association must be responsible for insurance, taxes, and maintenance of all commonly owned property and facilities.

2. Open Space Requirements: Planned Unit Developments must contain open space meeting all of the following criteria:

- a. At least fifty percent (50%) of the total project area must be preserved as open space;
- b. Dwelling units or sites, road rights-of-way, or land covered by road surfaces, parking areas, or structures, except water oriented accessory structures or facilities, are developed areas and shall not be included in the computation of minimum open space;
- c. Open space must include areas with physical characteristics unsuitable for development in their natural state, and areas containing significant historic sites or unplatted cemeteries;
- d. Open space may include outdoor recreational facilities for use by owners of dwelling units or sites, by guests staying in commercial dwelling units or sites, and by the general public;
- e. Open space may include subsurface sewage treatment systems if the use of the space is restricted to avoid adverse impacts on the systems;
- f. Open space must not include commercial facilities or uses, but may contain water oriented accessory structures or facilities;
- g. The appearance of open space areas, including topography,

vegetation, and allowable uses, must be preserved by use of restrictive deed covenants, permanent easements, public dedication and acceptance, or other equally effective and permanent means; and

h. The shore impact zone, based on normal structure setbacks, must be included as open space. For residential PUDs, at least fifty percent (50%) of the shore impact zone area of existing developments or at least seventy percent (70%) of the shore impact zone area of new developments must be preserved in its natural or existing state. For commercial PUDs, at least fifty percent (50%) of the shore impact zone must be preserved in its natural state.

3. Erosion Control And Storm Water Management: Erosion control and storm water management plans must be developed, and the PUD must:

a. Be designed, and the construction managed, to minimize the likelihood of serious erosion occurring either during or after construction. This must be accomplished by limiting the amount and length of time of bare ground exposure. Temporary ground covers, sediment entrapment facilities, vegetated buffer strips, or other appropriate techniques must be used to minimize erosion impact on surface water features. Erosion control plans approved by a soil and water conservation district may be required if project size and site physical characteristics warrant; and

b. Be designed and constructed to effectively manage reasonable expected quantities and qualities of storm water runoff. Impervious surface coverage within any tier must not exceed twenty five percent (25%) of the tier area; except that for commercial PUDs, thirty five percent (35%) impervious surface coverage may be allowed in the first tier of general development lakes with an approved storm water management plan and consistency with Subsection 13-4-6C of this chapter.

4. Centralization And Design Of Facilities: Centralization and design of facilities and structures must be done according to the following standards:

a. Planned Unit Developments must be connected to publicly owned water supply and sewer systems, if available. On site water supply and sewage treatment systems must be centralized and designed and installed to meet or exceed applicable standards or rules of the Minnesota Department of Health and Subsections 13-4-6B and H of this chapter. On-site sewage treatment systems must be located on the most suitable areas of the development, and

sufficient lawn area free of limiting factors must be provided for a replacement soil treatment system for each sewage system;

b. Dwelling units or sites must be clustered into one or more groups and located on suitable areas of the development. They must be designed and located to meet or exceed the following dimensional standard for the relevant shoreland classification: setback from the ordinary high water level, elevation above the surface water features, and maximum height. Setbacks from the ordinary high water level must be increased in accordance with Subsection E3 of this section for developments with density increases;

c. Shore recreation facilities, including, but not limited to, swimming areas, docks, and watercraft mooring areas and launching ramps, must be centralized and located in areas suitable for them. Evaluation of suitability must include consideration of land slope, water depth, vegetation, soils, depth-to ground water and bedrock, or other relevant factors. The number of spaces provided for continuous beaching, mooring, or docking of watercraft must not exceed one for each allowable dwelling unit or site in the first tier (notwithstanding existing mooring sites in an existing commercially used harbor). Launching ramp facilities, including a small dock for loading and unloading equipment, may be provided for use by occupants of dwelling units or sites located in other tiers;

d. Structures, parking areas, and other facilities must be treated to reduce visibility as viewed from public waters and adjacent shorelands by vegetation, topography, increased setbacks, color, or other means acceptable to the City Council, assuming summer, leaf-on conditions. Vegetative and topographic screening must be preserved, if existing, or may be required to be provided;

e. Accessory structures and facilities, except water oriented accessory structures, must meet the required principal structure setback and must be centralized; and

f. Water oriented accessory structures and facilities may be allowed if they meet or exceed design standards contained in Subsection 13-4-6B of this chapter and are centralized.

G. Conversions: The City Council may allow existing resorts or other land uses and facilities to be converted to residential Planned Unit Developments if all of the following standards are met:

1. Proposed Conversions: Proposed conversion must be initially evaluated using the same procedures for residential Planned Unit Developments involving all new construction. Inconsistencies between existing features

of the development and these standards must be identified.

2. Deficiencies: Deficiencies involving water supply and sewage treatment, structure color, impervious coverage, open space, and shore recreation facilities must be corrected as part of the conversion or as specified in the Conditional Use Permit.

3. Shore And Bluff: Shore and bluff impact zone deficiencies must be evaluated and reasonable improvements made as part of the conversion. These improvements must include, where applicable, the following:

a. Removal of extraneous buildings, docks, or other facilities that no longer need to be located in shore or bluff impact zones;

b. Remedial measures to correct erosion sites and improve vegetative cover and screening of buildings and other facilities as viewed from the water; and

c. If existing dwelling units are located in shore or bluff impact zones, conditions are attached to approvals of conversions that preclude exterior expansions in any dimension or substantial alterations. The conditions must also provide for future relocation of dwelling units, where feasible, to other locations, meeting all setback and elevation requirements when they are rebuilt or replaced.

4. Existing Dwellings Or Sites: Existing dwelling unit or dwelling site densities that exceed standards in Subsection E of this section may be allowed to continue but must not be allowed to be increased, either at the time of conversion or in the future. Efforts must be made during the conversion to limit impacts of high densities by requiring seasonal use, improving vegetative screening, centralizing shore recreation facilities, installing new sewage treatment systems, or other means. (Ord. 108, 9-20-1994)

CHAPTER 5

BLUFFLAND AND RIVERLAND DEVELOPMENT

SECTION:

- 13-5-1: Policy And Authorization
- 13-5-2: Purpose
- 13-5-3: General Provisions
- 13-5-4: Definitions
- 13-5-5: Scenic River District Regulations And Requirements
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- 13-5-7: Permits Required
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- 13-5-11: Amendments
- 13-5-12: Conditional Use Permits
- 13-5-13: Certification Procedures
- 13-5-14: Violation; Penalties

13-5-1: **POLICY AND AUTHORIZATION:** These provisions are for the controlling of bluffland and riverland development in order to protect and preserve the scenic, recreational, natural, historical and scientific values of the Rum River in Andover in a manner consistent with Minnesota Statutes and the Management Plan for the Rum River. (Ord. 223, 8-19-1997)

13-5-2: **PURPOSE:** The purpose of this chapter is to:

- A. Establish a scenic river district along the bluffland and shoreland of the Rum River as required by the Management Plan for the Rum River.
- B. Regulate within the Rum River district, a land use district, the area of the lots, and the length of bluffland and water frontage suitable for building sites.
- C. Regulate the setback of structures and sanitary waste treatment facilities from bluff lines and shorelines to protect the existing and/or natural scenic values, vegetation, soils, water quality, floodplain areas, and bedrock from disruption by manmade structures or facilities.
- D. Regulate alterations of the natural vegetation and topography.

- E. Maintain property values and prevent poorly planned development.
- F. Conserve and protect the natural scenic values and resources of the Rum River and maintain a high standard of environmental quality.
- G. Comply with Minnesota Statutes and the Management Plan for the Rum River. (Ord. 223, 8-19-1997)

13-5-3: **GENERAL PROVISIONS:**

- A. Jurisdiction: The jurisdiction of this chapter shall include all lands designated within the Rum River land use district within the jurisdiction of Andover as defined in the Management Plan for the Rum River.
- B. Compliance With Provisions: The use of any land within the Rum River land use district; the size and shape of lots; the use and location of structures on lots; the installation and maintenance of water supply and waste disposal facilities; the filling, grading, lagooning, or dredging of any river area; the cutting of vegetation or alteration of the natural topography within the district; and the subdivision of land shall be in full compliance with the terms of this chapter and other applicable regulations.
- C. Interpretation And Application: In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, and shall not be deemed a limitation or repeal of any powers or rights granted by Minnesota Statutes.
- D. Severability: It is hereby declared to be the intent of the City that several provisions of this chapter are separable in accordance with the following:
 - 1. If any court of competent jurisdiction shall adjudge any provision of this chapter to be invalid, such judgment shall not affect any other provisions of this chapter not specifically included in said judgment.
 - 2. If any court of competent jurisdiction shall adjudge invalid the application of any provision of this chapter to a particular property, building, or other structure, such judgment shall not affect the application of said provision to any other property, building, or structure not specifically included in said judgment.
- E. Abrogation And Greater Restrictions: It is not intended by this chapter to repeal, abrogate or impair any existing easements, covenants, deed restrictions, or land use controls. Where this chapter imposes greater restrictions, the provisions of this chapter shall prevail. (Ord. 223, 8-19-

1997)

13-5-4: **DEFINITIONS:** For the purpose of this chapter, certain terms and words are hereby defined as follows:

AGRICULTURAL USE:	The use of land for the production of food or fiber, their storage on the area, and/or raising thereon of domestic pets and domestic farm animals.
BLUFF LINE:	A line along the top of a slope connecting the points at which the slope becomes more than twelve percent (12%). This applies to those slopes within the land use district that are beyond the setback provisions from the ordinary high water mark.
BUILDING LINE:	That line measured across the width of the lot at the point where the main structure is placed in accordance with setback provisions.
CAMPGROUND:	An area accessible by vehicle and containing campsites or camping spots for tents and trailer camping.
CLEAR CUTTING:	The removal of an entire stand of vegetation.
COMMISSIONER:	The Commissioner of Natural Resources of the State.
CONDITIONAL USE:	A use of land which is permitted only when allowed by the City Council after a public hearing, if certain conditions are met which eliminate or minimize the incompatibility with other permitted uses of the district.
ESSENTIAL SERVICES:	Underground or overhead gas, electrical, stream or water distribution systems; collection, communication, supply, or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes, traffic signals, hydrants and other similar equipment and accessories in conjunction therewith; but not including buildings or transmission services.
FORESTRY:	The use and management, including logging, of a forest, woodland or plantation and related research and educational activities, including the construction, alteration or maintenance of woodroads, skidways, landings, and fences.
LOT:	Shall be considered to be an individual building site that shall be occupied by no more than one principal structure equipped with sanitary facilities, together with such open spaces as are required under the

provisions of the zoning ordinance, having not less than the minimum area required by the zoning ordinance for a building site in the district in which such lot is situated and having its principal frontage on a public street.

MANUFACTURED HOME: A housing unit designed for transportation after fabrication on streets and highways on its own wheels or on a flatbed trailer to the site where only minor assembly operations are necessary.

MINERALS: Soil, stone, clay, sand, gravel and other similar solid material or substance to be mined from natural deposits.

MINING: All or any part of the process involved in the extraction of minerals by removing the overburden and extracting directly from the soils, clay, stone, sand and gravel and other similar solid material or substance deposits thereby exposed.

MODULAR HOME: A non-mobile housing unit that is basically fabricated at a central factory and transported to a building site where final installations are made, permanently affixing it to the site, and built to meet or exceed the State Building Code.

NONCONFORMING USE: Any use established before February 3, 1981, that does not conform to the use restrictions of a particular zoning district. This should not be confused with substandard dimensions of a conforming use.

OPEN SPACE RECREATION USES: Recreation uses particularly oriented to and utilizing the outdoor character of an area, including hiking and riding trails, primitive campsites, campgrounds, waysides, parks and recreational areas.

ORDINARY HIGH WATER MARK: A mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. In areas where the ordinary high water mark is not evident, setbacks shall be measured from the stream bank of the

following water bodies that have permanent flow or open water: the main channel, adjoining side channels, backwaters and sloughs.

PLANNED UNIT DEVELOPMENT:

A development having two (2) or more principal uses or structures on a single parcel of land and developed according to an approved plan.

PRACTICAL DIFFICULTIES:

As used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. (Amended Ord. 407, 6-21-11)

PRIMITIVE CAMPSITES: An area that consists of individual remote campsites accessible only by foot or water.

SCREENED:

When a structure is built or placed on a lot or vegetation is planted such that when the structure is built it is visually inconspicuous as viewed from the river during the summer months. "Visually inconspicuous" means difficult to see or not readily noticeable in summer months as viewed from the river.

SELECTIVE CUTTING:

The removal of single scattered trees.

SETBACK:

The minimum horizontal distance between a structure and the ordinary high water mark or lot line, bluff line, or street. Distances are to be measured from the most outwardly extended portion of the structure.

SEWAGE TREATMENT SYSTEM:

Any system for the collection, treatment and dispersion of sewage including, but not limited to, septic tanks, soil absorption systems and drain fields.

SINGLE-FAMILY

A detached building containing one dwelling unit.

DWELLING:

STRUCTURE: Any building, sign or appurtenance thereto, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, or gas lines, including towers, poles, and other supporting appurtenances, and fences used to control livestock or delineate boundaries.

SUBDIVISION: Improved or unimproved land or lands which are divided for the purpose of ready sale or lease, or divided successively within a five (5) year period for the purpose of sale or lease, into three (3) or more lots or parcels of less than five (5) acres each, contiguous in area and which are under common ownership or control.

SUBSTANDARD USE: Any use within the land use district existing prior to February 3, 1981, which is permitted within the applicable land use district but does not meet the minimum lot area, length of water frontage, structure setbacks or other dimensional standards of this chapter.

VARIANCE: Any modification or variation of official controls where it is determined that by reason of exceptional circumstances, the strict enforcement of the official controls would cause practical difficulties. (Amended Ord. 407, 6-21-11)

WETLAND: Land which is annually subject to periodic or continual inundation by water and commonly referred to as a bog, swamp, or marsh. (Ord. 223, 8-19-1997; amd. 2003 Code)

13-5-5: **SCENIC RIVER DISTRICT REGULATIONS AND REQUIREMENTS:**

A. District Established And Designated:

1. In order to preserve and protect the Rum River and its adjacent lands which possess outstanding scenic, recreational, natural, historical, scientific and similar values, the Rum River in Andover has been given the scenic river classification and the uses and classification of this river and its adjacent lands are hereby designated by land use zoning districts, the boundaries of which are based on the Management Plan for the Rum

River.

2. The boundaries of the Rum River scenic land use district are shown on the map designated as the Andover official zoning map, which is made a part of this chapter and is on file in the offices of the Zoning Administrator¹. In case of conflict between the map and the property descriptions in the Management Plan for the Rum River, the latter shall prevail. (Ord. 223, 8-19-1997; amd. 2003 Code)

B. Minimum District Dimensional Requirements:

1. The following chart sets forth the minimum area, setbacks, and the requirements of the Rum River scenic river district:

a. Minimum lot size:

(1) Riparian lots: 4 acres.

(2) Nonriparian lots: 2 1/2 acres.

b. Lot width at building line:

(1) Lots of record: 300 feet.

(2) Newly created lots: 300 feet.

c. Lot width at ordinary high water mark: 300 feet.

d. Building setbacks:

(1) From ordinary high water mark: 150 feet.

(2) From bluff line: 30 feet.

e. On site sewage treatment system setback from ordinary high water mark: 100 feet.

f. Maximum structure height: 35 feet. This requirement shall not apply to buildings used primarily for agricultural uses.

g. Controlled vegetative cutting area (see Subsection E of this section):

(1) Setback from ordinary high water mark: 150 feet.

¹ See section 12-3-5 of this code.

(2) Setback from bluff line: 30 feet.

h. Side yard setbacks:

(1) From street (corner lot): 30 feet.

(2) From interior lot line: 10 feet.

i. Front yard setback (building line closest to street): 40 feet.

j. Lot depth from high water mark: 250 feet.

2. On the Cedar Creek tributary designated in the Management Plan for the Rum River, the following setbacks also apply within the land use district:

a. Building setbacks from ordinary high water mark: 100 feet.

b. On site sewage treatment system setback from ordinary high water mark: 75 feet.

c. Controlled vegetative cutting area setback from ordinary high water mark (see Subsection E of this section): 100 feet.

3. No structure shall be placed on any slope greater than twelve percent (12%) (12 feet vertical rise in 100 feet horizontal distance), unless such structures can be screened from river view with natural vegetation; where practicable, sewage disposal system facilities can be installed so as to comply with the sanitary provisions of Subsection D of this section; and the building permit applicant can prove to the City Council that any potential erosion or sedimentation problems related to locating such a structure either do not exist or that adequate measures will be taken to prevent such problems through special construction methods.

4. No structures shall be placed in any floodway. Structures proposed within a floodplain shall be consistent with the city and/or statewide "Standards And Criteria For Management Of Flood Plain Areas Of Minnesota"¹.

5. Lots of record in the office of the County Recorder which meet all legal requirements of the city prior to February 3, 1981, but do not meet the dimensional requirements of this chapter shall be allowed as building sites, provided such use is permitted in the land use district, the lot was in separate ownership prior to February 3, 1981, and all sanitary and dimensional requirements of this chapter are complied with as far as

¹ See title 14, chapter 1 of this code.

practicable.

6. If in a group of contiguous lots under single ownership, any individual lot does not meet the lot width requirements of this chapter, such individual lot cannot be considered as a separate parcel of land for purposes of sale or development, but must be combined with adjacent lots under the same ownership so that the combination of lots will equal one or more parcels of land each meeting the lot width requirements of this chapter; except that such lots which meet or exceed sixty percent (60%) or more of the lot width standards of these regulations may be considered as a separate parcel of land for the purpose of sale and development, if on-site sewage disposal systems can be installed so as to comply with these regulations.

C. Uses Within Districts:

1. Purpose: The purpose of establishing standards and criteria for uses in the Rum River land use district shall be to protect and preserve existing natural, scenic, historical, scientific, and recreational values, to maintain proper relationships between various land use types, and to prohibit new residential, commercial, or industrial uses that are inconsistent with the statewide standards and criteria for wild and scenic rivers and the Management Plan for the Rum River.

2. Permitted And Conditional Uses:

a. In the following tables of uses: "P" means permitted use and "C" means conditional use. Certain of the following uses are subject to the zoning dimension provisions and sanitary provisions of subsections A, B and D of this section. All of the following uses are subject to the vegetative cutting provisions of Subsection E of this section:

(1) Governmental campgrounds, subject to management plan specifications and approval of the Commissioner: P

(2) Private campgrounds, subject to management plan specifications and the provisions of Section 13-5-13 of this chapter (certification): C

(3) Public accesses, road access type with boat launching facilities subject to management plan specifications and approval of the Commissioner: P

(4) Public access, trail access type, subject to management plan specifications and approval of the Commissioner: P

- (5) Temporary docks: C
- (6) Other governmental open space recreational uses, subject to management plan specifications and the approval of the Commissioner: P
- (7) Other private open space recreational uses, subject to management plan specifications and the provisions of Section 13-5-13 of this chapter (certification): C
- (8) Agricultural uses: P
- (9) Single-family residential uses, except manufactured and modular homes: P
- (10) Forestry uses: P
- (11) Essential services: P
- (12) Sewage disposal systems: P
- (13) Private roads and minor public streets: P
- (14) Signs approved by federal, state, or local government that are necessary for public health and safety, and signs indicating areas that are available or not available for public use: P
- (15) Signs not visible from the river that are not specified in (14) above: P
- (16) Governmental resource management for improving fish and wildlife habitat, wildlife management areas, nature areas, accessory roads: P
- (17) Underground mining that does not involve surface excavation in the land use district: C
- (18) Utility transmission power lines (60KV through 199KV) and pipelines, subject to the provisions of Subsection E of this section: C
- (19) Public roads, subject to the provisions of Subsection E of this section: C

b. All uses not listed as permitted or conditional uses shall not be

allowed within the applicable land use district without review and approval of the City Council and Commissioner of Natural Resources.

D. Water And Sewer:

1. Sewer System Requirements:

a. Any new dwelling intended for human occupancy must provide for an adequate method of sewage treatment. Public or municipal collection and treatment facilities must be used where available and feasible. Where public or municipal facilities are not available, all new on-site individual sewer treatment systems shall conform to the minimum standards and administrative procedures set forth in other applicable local ordinances¹, the minimum standards of the Minnesota Pollution Control Agency (individual sewage treatment systems standards) and Subsection B of this section.

b. No person, firm or corporation shall install, alter, repair or extend any individual sewer disposal system or private well without first obtaining a permit for such action from the city for the specific installation, alteration, repair, or extension. Prior to issuance of any such permit, the city shall require that percolation rate tests and, at the discretion of the Building Official, soil boring tests be done on the proposed site for an individual sewer disposition to determine whether or not the site is capable of supporting a conforming sewage treatment system.

2. Water Supply: Any new public or new private supply of water for domestic purposes must conform to Minnesota Department of Health standards for water quality and the administrative procedures of other applicable local ordinances².

E. Landscape Alterations:

1. General Provisions: The vegetative cutting provisions shall apply to those areas specified in Subsection B of this section. The following are general provisions, within designated setback areas:

a. Clear cutting, except for any authorized public services such as roads and utilities, shall not be permitted.

¹ See sections 10-2-3 and 12-12-4 and title 10, chapter 4 of this code.

² See title 10, chapter 1 of this code.

b. Selective cutting of trees in excess of four inches (4") in diameter at breast height shall be permitted, provided cutting is spaced in several cutting operations and a continuous tree cover is maintained.

c. The cutting provisions as stated above shall not be deemed to prevent:

(1) The removal of diseased or insect infested trees, or of rotten or damaged trees that present safety hazards.

(2) Pruning under story vegetation, shrubs, plants, bushes, and grasses, or from harvesting crops, or cutting suppressed trees or trees less than four inches (4") in diameter at breast height. (Ord. 223, 8-19-1997)

2. Clear Cutting: Clear cutting anywhere in the scenic river district is subject to the following standards and criteria:

a. Clear cutting shall not be used as a cutting method where soil, slope, or other watershed conditions are determined by the City Council to be fragile and subject to severe erosion and/or sedimentation.

b. Clear cutting shall be conducted only where clear-cut blocks, patches or strips are, in all cases, shaped and blended with the natural terrain.

c. The size of clear-cut blocks, patches or strips shall be kept at the minimum necessary.

d. Where feasible, all clear cuts shall be conducted between September 15 and May 15. If natural regeneration will not result in adequate vegetative cover, areas in which clear cutting is conducted shall be planted to prevent erosion and to maintain the aesthetic quality of the area. Where feasible, replanting shall be performed in the same spring, or the following spring.

3. Grading And Filling: Grading and filling work done within the scenic river district shall require a permit and shall comply with the following:

a. Grading and filling of the natural topography that is not necessary to a permitted or conditional use shall not be permitted in the Rum River land use district. (Ord. 223, 8-19-1997; amd. 2003 Code)

b. Grading and filling of the natural topography that is accessory to a permitted or conditional use shall not be conducted without an approved grading and filling permit from the city. A grading and filling permit may be issued only if the conditions of this subsection are properly satisfied.

c. Grading and filling of the natural topography which is necessary to a permitted or conditional use shall be performed in a manner which minimizes earthmoving, erosion, tree clearing, and the destruction of natural topography.

d. Grading and filling in of the natural topography shall also meet the following standards:

(1) The smallest amount of bare ground is exposed for as short a time as feasible.

(2) Temporary ground cover such as mulch is used and permanent ground cover is planted.

(3) Methods to prevent erosion and to trap sediment are employed.

(4) Fill is stabilized to accepted engineering standards.

4. Resultant Changes To River; Permit Required: Any activity which will change or diminish the course, current or cross section of any public waters, including, but not limited to, filling, excavating or placing of any materials in or on the beds of public waters, is prohibited unless authorized by a previously obtained permit from the Commissioner of Natural Resources pursuant to Minnesota Statutes. "Public waters" shall be as defined in Minnesota Statutes.

5. Tampering With Wetlands Prohibited: Drainage or filling in of wetlands is not allowed within the land use district designated by this chapter.

6. Utility Transmission Crossing: All utility transmission crossings of land within the Rum River land use district shall require a Conditional Use Permit. The construction of such transmission services shall be subject to the standards and criteria of Minnesota Statutes. With respect to electric power utility transmission crossings, a Conditional Use Permit shall be required for crossings of 69 kilovolts through 199 kilovolts. No Conditional Use Permit shall be required for high voltage (200 kilovolts or greater) transmission lines under control of the Environmental Quality Board pursuant to Minnesota Statutes. However, lines of 200 kilovolts or more

that are exempt by the Environmental Quality Board shall require a Conditional Use Permit.

7. Construction Of Public Roads: In addition to such permits as may be required by Minnesota Statutes, a Conditional Use Permit shall be required for any construction or reconstruction of public roads within the Rum River land use district. Such construction or reconstruction shall be subject to the standards and criteria of Minnesota Statutes, and city street and road standards as adopted by the City Council. A Conditional Use Permit is not required for minor public streets which are streets intended to serve primarily as an access to abutting properties; however, they shall be constructed or reconstructed to comply with city street and road standards. Public roads include township, county, and municipal roads and highways that serve or are designed to serve flows of traffic between communities or other traffic generating areas.

F. Subdivisions: No land shall be subdivided which is determined by the governing body or the Commissioner to be unsuitable by reason of flooding, inadequate for development, severe erosion potential, unfavorable topography, inadequate water supply or sewage treatment capabilities or any other feature likely to be harmful to the health, safety, or welfare of the future residents of the proposed subdivision or the community. Percolation rate tests and soil boring tests shall be required as deemed necessary by the City Building Official, to be done by the subdivider, and the results submitted to the City Council to assure that each lot in the proposed subdivision is capable of supporting a sewage treatment system of the type recommended by the Minnesota Pollution Control Agency standards for individual sewage treatment systems¹.

G. Planned Unit Developments: A Planned Unit Development may be allowed only when the proposed clustering provides a better means of preserving agricultural land, open space, woods, scenic views, wetlands, and other features of the natural environment than traditional subdivision development. Except for minimum setbacks and height limits, altered dimensional standards may be allowed as exceptions to this chapter for Planned Unit Developments, provided:

1. Preliminary plans are approved by the Commissioner prior to their enactment by the governing body.

2. Central sewage facilities are installed which meet the standards, criteria, rules or regulations of the Minnesota Department of Health and the Pollution Control Agency.

3. Open space is preserved. This may be accomplished through the use of

¹ See title 10, chapter 4 of this code.

restrictive deed covenants, public dedications, granting of scenic easements, or other methods.

4. There is not more than one centralized boat launching facility for each Planned Unit Development. (Ord. 223, 8-19-1997)

13-5-6: **ADMINISTRATION OF PROVISIONS:** The provisions of this chapter shall be administrated by the City Council. The City Council shall act upon all questions as they arise in the administration of this chapter, shall hear and decide appeals, and shall review any order, requirements, decisions or determination as provided by Minnesota Statutes. Permit fees and inspection fees shall be established by ordinance and shall be collected by the city for deposit with the city and credited to the general fund. (Ord. 223, 8-19-1997; amd. 2003 Code)

13-5-7: **PERMITS REQUIRED:** Permits from the city are required by this chapter and other applicable ordinances for the construction of buildings, public or private water supply and sewage treatment systems, the grading and filling of the natural topography and erection of signs within the Rum River land use district. (Ord. 223, 8-19-1997)

13-5-8: **NONCONFORMING AND SUBSTANDARD USES:**

A. Nonconforming Uses:

1. Uses which are prohibited by this chapter but which are in existence prior to the effective date of this chapter shall be nonconforming uses. Such uses shall not be intensified, enlarged, or expanded.

2. All private sanitary sewer systems inconsistent with the performance standards of the city's sanitary sewer ordinances and the minimum standards of the Minnesota Pollution Control Agency and the State Plumbing Code within the Rum River scenic river district shall be brought into conformity or discontinued within the time frame specified in Title 10, Chapter 4 of this code.

B. Substandard Uses: All uses in existence prior to February 3, 1981, which are permitted uses within the newly established land use district, but do not meet the minimum lot area, setbacks or other dimensional requirements of this chapter are substandard uses. All substandard uses, except for substandard signs, shall be allowed to continue subject to the following conditions and exceptions:

1. Any structural alteration or addition to a substandard use that will increase the substandard setback shall not be allowed.

2. Where a setback pattern from the ordinary high water mark has already been established on both sides of a proposed building site, the setback of the proposed structure may be allowed to conform to that pattern. This provision shall apply to lots that do not meet the minimum lot width requirements in Subsection 13-5-5B of this chapter. (Ord. 223, 8-19-1997)

13-5-9: **VARIANCES:** Variances to the strict provisions of this chapter may be granted as provided in City Code 12-14-7 and as follows (Amended Ord. 407, 6-21-11):

- A. Granting of the variance is not contrary to the purpose and intent of the zoning provisions herein established by these standards and criteria, and is consistent with the Management Plan for the Rum River.
- B. A variance may not be granted to allow any use which is not a permitted or conditional use in the Rum River land use district. (Amended Ord. 407, 6-21-11)
- C. Granting of the variance will not alter the essential character of the locality as established by the Management Plan for the Rum River. (Ord. 223, 8-19-1997; amd. 2003 Code)

13-5-10: **PLATS:**

- A. Copies To State: Copies of all plats within the boundary of the Rum River land use district shall be forwarded to the Commissioner within ten (10) days of approval by the City Council.
- B. Inconsistent Plats: Approval of a plat which is inconsistent with this chapter is permissible only if the detrimental impact of the inconsistency is more than overcome by other protective characteristics of the proposal. All inconsistent plats approved by the city must be certified in accordance with Section 13-5-13 of this chapter. (Ord. 223, 8-19-1997)

13-5-11: **AMENDMENTS:**

- A. Amendments Authorized; Certification: This chapter may be amended whenever the public necessity and the general welfare require such amendments by the procedure specified in this section. Amendments to this chapter must be certified by the Commissioner as specified in Section 13-5-13 of this chapter.
- B. Initiation Of Amendment; Application: Amendments to this chapter may be initiated by a petition to the Planning and Zoning Commission or by action of the City Council. An application for an amendment

shall be filed with the city.

- C. Public Hearing: Upon receipt in proper form of the application and other requested materials, the Planning and Zoning Commission shall conduct a public hearing in the manner prescribed by Minnesota Statutes.
- D. City Council Recommendation: Within sixty (60) days following the public hearing, the City Council shall make a report of its recommendations on the proposed amendment and shall file a copy with the Commissioner. Certification from the Commissioner must be obtained as specified in Section 13-5-13 of this chapter before the proposed amendment becomes effective. (Ord. 223, 8-19-1997)

13-5-12: CONDITIONAL USE PERMITS:

- A. A copy of application to consider issuance of a Conditional Use Permit shall be received by the Commissioner at least thirty (30) days prior to such hearings or meetings to consider issuance of a Conditional Use Permit. A copy of the decision shall be forwarded to the Commissioner within ten (10) days of such action. (Ord. 223, 8-19-1997; amd. 2003 Code)
- B. Conditional Use Permits relating to private or commercial recreational development must be certified in accordance with Section 13-5-13 of this chapter. (Ord. 223, 8-19-1997)

13-5-13: CERTIFICATION PROCEDURES:

- A. State Certification Required: Certain land use decisions which directly affect the use of land within the Rum River land use district and involve any of the following actions must be certified by the Commissioner: (Ord. 223, 8-19-1997; amd. 2003 Code)
 - 1. Adopting or amending an ordinance including rezoning of particular tracts of land.
 - 2. Granting a variance from a provision of this chapter that relates to the zoning dimension provisions of Subsection 13-5-5B of this chapter or any other dimension provisions established in the Management plan for the Rum River.
 - 3. Approving a plat that is inconsistent with this chapter.
 - 4. Granting a Conditional Use Permit for a private or commercial recreational development.

B. Procedure: Certification procedure is as follows:

1. A copy of all notices of any public hearings, or where a public hearing is not required, a copy of the application to consider zoning amendments, variances, or inconsistent plats under local ordinance shall be received by the Commissioner at least thirty (30) days prior to such hearings or meetings to consider such actions. The notice of application shall include a copy of the proposed inconsistent plat, or a description of the requested variance.

2. The Andover City Council shall notify the Commissioner of its decision on the proposed action within ten (10) days of the decision.

3. The action becomes effective when either:

- a. The final decision taken by the city has previously received certification of approval from the Commissioner; or
- b. The city receives certification of approval after its final decision; or
- c. Thirty (30) days have elapsed from the day the Commissioner received notice of the final decision, and the city has received from the Commissioner neither certification of approval nor notice of non-approval; or
- d. The Commissioner certifies his or her approval within thirty (30) days after conducting a public hearing.

4. In case the Commissioner gives notice of non-approval of an ordinance, variance or inconsistent plat, either the applicant or the City Council may, within thirty (30) days of said notice, file with the Commissioner a request for hearing. If the demand for hearing is not made within thirty (30) days, the notice of non-approval becomes final. Where a hearing is requested, it shall be:

- a. Held by the city within sixty (60) days of the demand and after at least two (2) weeks' published notice.
- b. Conducted in accordance with Minnesota Statutes.

The Commissioner shall certify his or her approval or disapproval of the proposed action within thirty (30) days of the hearing. (Ord. 223, 8-19-1997)

- C. Permit And Certification Table: The following table summarizes the permit and certification process within the Rum River land use district: (Ord. 223, 8-19-1997; amd. 2003 Code)

<u>Land Use District Permits</u>	<u>Action Necessary</u>
Building permits	LP
Sign construction permits	LP
Septic permits	LP
Water supply permits	LP
Grading, filling permits	LP
Conditional Use Permits, general Conditional Use	PH-FD
Conditional Use Permits for private recreational developments	PH-CC
Amendments to provisions	PH-CC
Amendments to district boundary	PH-CC
Inconsistent plats	PH-CC
Planned Unit Development	PH-CC
Variances	PH-WA
Plats	PH (notification not required)-FD

LP - Permit issued by the City Council in accordance with this chapter and all other local ordinances.

CC - Certification by the Commissioner of Natural Resources prior to final local approval.

PH - Public hearing necessary by the City Council giving thirty (30) days' notice of the hearing to the Commissioner of Natural Resources.

FD - City Council forwards any decisions to the Commissioner of Natural

Resources within ten (10) days after taking final action.

WA - The Commissioner of Natural Resources shall submit, after notice of public hearing and before the City Council gives preliminary approval, a written review and approval or denial of the project.

(Ord. 223, 8-19-1997)

13-5-14: **VIOLATION; PENALTIES:** It is declared unlawful for any person to violate any of the terms and provisions of this chapter. Violation thereof shall be a misdemeanor and shall be punishable as provided under state law. Each day that a violation is permitted to exist shall constitute a separate offense. In the event of a violation of this chapter, the City Council or the Commissioner of Natural Resources, in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, or abate such violations. (Ord. 223, 8-19-1997)

CHAPTER 6

BUFFER STRIPS AND STANDARDS FOR PROTECTION OF WETLANDS AND STORM WATER PONDS

SECTION:

- 13-6-1: Incorporation Of State Regulations
- 13-6-2: Findings And Intent
- 13-6-3: Purpose And Implementation
- 13-6-4: Definitions
- 13-6-5: Buffer Strips And Setbacks
- 13-6-6: Buffer Strip Protection Plan
- 13-6-7: Variances
- 13-6-8: Inspections And Investigations
- 13-6-9: Violation; Penalty

13-6-1: **INCORPORATION OF STATE REGULATIONS:** This chapter hereby incorporates by reference the Wetlands Conservation Act of 1991 (Minnesota Statutes Section 103G.221 et seq., hereinafter referred to as the WCA) and any future amendments adopted by the legislature. All wetlands and activities shall comply with those regulations as adopted under the WCA. (Ord. 114A, 7-17-2001)

13-6-2: **FINDINGS AND INTENT:** The city finds it necessary to regulate the use of lands surrounding wetlands and storm water ponds. Buffer strips are necessary and beneficial to maintaining the health of wetlands and storm water ponds. These strips of land surrounding wetlands and storm water ponds protect their shorelines from erosion, while serving to filter sediment, chemicals and other nutrients before storm water discharges into these water features. Buffer strips are also beneficial in providing habitat for wildlife. It is the intent of this chapter to establish and maintain a buffer strip that abuts all wetlands and storm water ponds that may be left undisturbed, or in its natural condition. (Ord. 114A, 7-17-2001; amd. 2003 Code)

13-6-3: **PURPOSE AND IMPLEMENTATION:**
Through the adoption and enforcement of this chapter, the city shall promote the general health, safety, and welfare of its residents by both conserving and protecting water features of the city. The city seeks to accomplish the following purposes:

- A. To satisfy all of the requirements of the Wetlands Conservation Act of 1991, as amended;

- B. To balance the need to preserve and protect natural resources and systems with both the rights of private property owners and the need to support the efficient use of developable land within the city;
- C. To promote water quality by maintaining the ability to recharge ground water and receive the discharge of ground water, to retain sediment and toxicants and filter and strip nutrients from surface water runoff before it discharges into community lakes and streams, thus avoiding the contamination and eutrophication of these water features; and
- D. To provide wildlife habitat and thereby support the maintenance of diversity of both plant and animal species within the city. (Ord. 114A, 7-17-2001)

13-6-4: **DEFINITIONS:**

BUFFER STRIP: A one rod (16.5 feet or 5 meters) wide area abutting a wetland and/or storm water pond that shall be left undisturbed or in its natural condition during the development, building and landscaping phases. The buffer strip shall not be included within the one hundred and ten foot (110') buildability requirement of Section 11-1-4 of this code, definition of "buildable lots". (Amd. 2/20/07, Ord. 340)

WETLANDS: Lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. For the purposes of this definition, "wetlands" must:

- A. Have a predominance of hydric soils;
- B. Be inundated or saturated by surface water or ground water at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and
- C. Under normal circumstances, support a prevalence of such hydrophytic vegetation. (Ord. 114A, 7-17-2001)

13-6-5: **BUFFER STRIPS AND SETBACKS:**

- A. Buffer Strips Required: For lots of record created after the adoption of this chapter, a buffer strip shall be established abutting all wetlands and/or

storm water ponds. The buffer provisions of this chapter shall not apply to developments that have paid the preliminary plat fee (as established in Subsection 11-2-2B of this code) to the city within thirty (30) days after the adoption of this chapter.

B. Requirements: Buffer strips shall be established and maintained in accordance with the following requirements:

1. Buffer strips shall be identified within each lot by active protective fencing approved by the city. The developer shall be responsible for the placement of the fencing. A one rod (16.5 feet or 5 meters, measured linear) wide undisturbed buffer strip shall be maintained abutting all wetlands and/or storm water ponds during the development and building phases. (Ord. 114A, 7-17-2001)

2. Buffer strips shall apply to all wetlands and/or storm water ponds. Buffer strips shall be measured from the delineated wetland boundary around wetlands and from the designated normal water level elevation surrounding storm water, sedimentation and/or rate control ponds, as identified on the grading, drainage, and erosion control plan for all new developments. (Amd. 2/20/07, Ord. 340)

C. Fencing:

1. Active protective fencing shall be installed by the developer/builder along the most upland edge of all buffer strips prior to any development and/or building construction. These fences will be a minimum of three feet (3') high. Geotextile fabric fencing (silt fence) is acceptable as long as it meets MNDOT 3733 Type 3.

2. All fencing barriers must be installed prior to and maintained throughout development and/or building construction. The fencing barriers are intended to inform the developer, builder and property owner of the buffer strip protection process.

3. All fencing barriers shall not be removed until construction and/or development has been completed. It shall be the responsibility of the builder or property owner to remove all fencing barriers once the lot has been landscaped (soil and/or seed established). (Ord. 114A, 7-17-2001; amd. 2003 Code)

D. Exemptions From Provisions:

1. City initiated projects (i.e., trails, roads, etc.) may be exempt from the buffer strip requirements.

2. No height requirements shall apply to grass and weeds that are located in the buffer strip. (Ord. 114, 7-16-1996; amd. 2003 Code)

13-6-6: BUFFER STRIP PROTECTION PLAN:

- A. A wetland buffer strip protection plan shall be submitted either as part of the grading, drainage and erosion control plan or as a separate drawing, to include the following:
 - 1. Location of all wetlands.
 - 2. Location of wetland buffer measures.
 - 3. Location of buffer strips.
 - 4. All required setbacks from the buffer strips.
- B. The following notes shall be indicated on the wetland buffer strip plan in large letters:
 - 1. Contact the city prior to any land disturbance.
 - 2. All wetland buffer strip protection measures shall be installed prior to development and/or building construction. (Ord. 114, 7-16-1996)

13-6-7: VARIANCES:

- A. Request For Variance: Requests for variances from the strict provisions of this chapter shall be made in accordance with the procedures and requirements set forth in City Code 12-14-7, except that any variance requests shall be made as a part of the preliminary plat approval process, or lot split approval process, when applicable. (Amended Ord. 407, 6-21-11)

13-6-8: INSPECTIONS AND INVESTIGATIONS: The City Administrator or his or her duly authorized employees shall inspect all premises and places within the city as often as practicable to determine whether any condition described in this chapter exists. The inspector shall investigate all reported wetland incidents. (Ord. 114, 7-16-1996)

13-6-9: **VIOLATION; PENALTY:**

A. Notice Of Violation:

1. A general notice will be given to any developer, builder, or property owner who fails to comply with the provisions of this chapter. The notice will state the following information:

- a. The violation.
- b. Items or work to be completed in order to comply.
- c. Date work to be completed.

2. Failure to comply with this notice will result in an order to stop work on the site.

B. Violation A Misdemeanor; Penalty: Any person (firm, or corporation) who violates any section of this chapter or obstructs staff or their representatives from carrying out their duties, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as defined by state law. (Ord. 114, 7-16-1996)